Programming Responses for Intimate Partner Violence

Lisa Heslop, Tim Kelly, Randal David, Katreena Scott

Department of Justice Canada

2016

Department of Justice Canada | Ministère de la Justice Canada

Canada

The views expressed in this publication are those of the authors and do not necessarily represent the views of the Department of Justice Canada or the Government of Canada.

Acknowledgements

The authors would like to thank all those who provided information for this report, as well as those who reviewed drafts including provincial and territorial officials responsible for addressing intimate partner violence in their respective jurisdictions. The report was also reviewed by officials at the Department of Justice Canada in the Family, Children and Youth Section and the Research and Statistics Division.

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INTRODUCTION

The Department Justice Canada has a mandate to ensure a strong justice system response to family violence with appropriate criminal laws and procedures that ensure offender accountability. While there is no specific family violence offence in the *Criminal Code*, there is a wide range of offences related to the use of physical and sexual violence that are applicable within intimate partner relationships. Such offenses are referred to in this report as intimate partner violence (IPV). *Criminal Code* sentencing provisions consider IPV as an aggravating factor and have been designed to provide sanctions that are both punitive and rehabilitative. This report was undertaken for the Research and Statistics Division and the Family, Children and Youth Section of the Department of Justice Canada to provide a better understanding of the current landscape of programming aimed at perpetrators of IPV across Canada. The report also augments the now archived *2008 Directory of Canada's Treatment Programs for Men Who Abuse Their Partners*, one of a series of directories prepared under the Family Violence Initiative of the Government of Canada.

CONTEXT

Justice-linked intervention responses to IPV have been developed and implemented in virtually all regions of Canada. With respect to federal offenders, Correctional Service Canada (CSC) is legally mandated to provide programs and services that address offenders' criminal behaviour and contribute to their successful transition into the community. For the majority of those convicted of IPV-related offending, services provided by CSC are augmented by community-based treatment.

Many of Canada's provinces and territories have developed IPV action plans, either current or in the recent past, that are relevant to understanding the nature of justice-linked IPV services. IPV action plans both *reflect* and *direct* the priorities for justice-linked services. Provincial and territorial action plans were most often developed as a result of strong advocacy by, and in close collaboration with, grassroots and community level organizations. As such, these plans reflect the unique culture, needs, and political landscapes of different regions of Canada.

IPV action plans also substantially direct the funding and availability of justice-linked family violence services across the provinces and territories. For example, provincial level decisions around the existence and nature of designated IPV courts (or court processes) substantially influence how men interact with the criminal justice system (CJS) and therefore how they access services mandated by the CJS. In some provinces, the Justice of the Peace (JP) or Judge has the ability to order treatment prior to a conviction for an IPV-related offence, including addictions treatment. In these provinces, community-based services are designated to meet this need. In other cases, police identify high-risk families where no charges have been laid for intervention. In this context, community agencies have services to engage at-risk men in treatment. Other policy-related differences concern the integration (or lack of integration) of child protection, addictions treatment, and broader social services (e.g., housing) into justice-linked intervention responses to IPV. Although, recommendations with respect to therapeutic intervention or programming for offenders are generally a small part of IPV action plans, the overall priorities of

the action plan are directly reflected in the justice-linked services provided to address family violence.

In this report, we begin our review of services in each province and territory with a brief description of the broader IPV action plans, legislation and/or processes that reflect and direct justice linked intervention services. Links to original documents are provided whenever possible. We recognize that this "top-down" organization can obscure the historic and ongoing influence of grassroots and community organizations on setting and implementing policy. Given the considerable body of implementation literature showing that with greater stakeholder involvement, IPV action plans are more comprehensive, stronger, and more likely to be implemented (Burby 2003; Hawking, Catalano and Arthur 2002), it is critical to remember the bidirectional influence of government and agencies on policy creation, implementation, and oversight.

Following the section on context, the justice-linked IPV intervention response in each province and territory is described. A summary of key aspects of the response is provided in Table 1. As part of this summary, information is provided on the intervention services themselves. This includes a listing of major intervention service providers, how they are funded, and who they serve. Additionally, the length, organization, and conceptual models that currently guide intervention are summarized. On the basis of program descriptions (available online and as discussed in interviews with key informants), intervention modalities are classified into the categories listed below. We recognize that many intervention programs use more than one modality and in some cases, two or more modalities are fully integrated (e.g., addictions and IPV services, Alberta YWCA Calgary).

- Psychoeducational model focuses on providing education on the nature of violence and abuse and alternatives to such behaviors. In IPV treatment, psychoeducational programs are often based on the Duluth model which adds a focus on re-educating men to hold less sexist attitudes, form more egalitarian relationships, and better recognize and confront male privilege personally and in society.
- Cognitive-behavioural approaches focus directly on changing unhelpful/maladaptive thinking and behaviour. This treatment modality is present- and goal-focused and often incorporates segments on anger regulation where participants are taught self-monitoring, methods to alter maladaptive thinking, and skills for appropriate expression of anger and related emotions.
- Narrative therapy (within a feminist perspective) assists participants to review their beliefs about themselves in relation to their world, challenging those beliefs that are distorted, and helps them to access their preferred self. In IPV treatment, narratives around gender are often emphasized.
- Risk, Needs, Responsivity model refers to a broader organization of services where attempts are made to match the intensity and focus of the intervention with the offender's level of risk, focus service on factors that directly relate to reduced risk of recidivism (called criminogenic needs) and deliver intervention in a manner that is most accessible to the offender's learning style and strengths.

- Life-skills approaches target problem solving in all domains, teach skills such as job searching, computer literacy, and budgeting, and link men to resources to meet their specific needs, such as housing or employment.

Intervention programs for IPV are one component of a broader justice response and must be understood within the context of these systems. Accordingly, we also review key aspects of how the justice system interacts with IPV intervention programs. We consider how risk assessment information is used to direct response, the provisions made for accountability to victims, and the nature of community coordination including how information is shared across and between systems.

A high level of overlap between IPV and child maltreatment has been repeatedly documented in research and official statistics. Co-occurrence of IPV and child maltreatment is a challenge to Canadian systems, which have typically responded to these issues independently. For this review, we examined the extent to which parenting interventions relevant to IPV exposure and maltreatment are available as a component of justice-linked responses to IPV. Particular attention was paid to identifying robust responses; in other words, those that integrate and/or coordinated justice/probation and child protection responses as well as provided relevant intervention programming to support healthy parenting.

Finally, when possible, we highlight aspects of program evaluation and innovation for each province and territory.

OBJECTIVES

This report was designed to review and summarize programming provided in court-based, clinical, and community settings and directed towards perpetrators of IPV identified by the justice system. Focus was placed on programs for majority offenders; specifically, heterosexual men involved in the criminal justice system as a result of offending against women. Programs for perpetrators seeking services voluntarily or referred via community agencies or child protection services may be mentioned, but were not the focus of our review. Similarly, interventions specific to women offenders and LGBTQ offenders were not specifically reviewed. Services developed for specific language and cultural minority groups are reviewed and described when they are a key component of a justice-linked intervention response, but otherwise are not covered comprehensively. Finally, this report is limited to justice-linked responses that are community based; programs offered to offenders while incarcerated were not reviewed.

METHODOLOGY

Justice-linked intervention services across Canada were reviewed based on the following data: 1) policy and practice documents that direct and describe justice-linked interventions for IPV in each province or territory; 2) review of online material from agencies providing justice-linked services to perpetrators of IPV; 3) interviews with key informants from each province and territory (see Appendix B for a complete list); and 4) review of research on Canadian programs. Online reviews and interviews with key informants covered the following:

- Source of funding
- Intake protocols
    - Source of referrals
    - Information sharing protocols
- Service components
    - Service model
    - Theoretical framework
    - Risk assessment
    - Provisions for victim service/safety planning
- Community integration/collaboration[1]

FINDINGS: PROGRAMMING RESPONSES FOR PERPETRATORS OF INTIMATE PARTNER VIOLENCE

ALBERTA

Context

Legislation: *Protection Against Family Violence Act, 2000*
http://www.qp.alberta.ca/documents/Acts/p27.pdf

Provincial Action Plan: *Family Violence Hurts Everyone: A Framework to End Family Violence in Alberta (2013)*
http://humanservices.alberta.ca/documents/family-violence-hurts-everyone.pdf

Domestic Violence Court: Available in eight jurisdictions: Calgary, Edmonton, Lethbridge, Grande Prairie, Red Deer, Fort McMurray, Airdrie, and Medicine Hat.

In 1984, Alberta established the Office for the Prevention of Family Violence, which was the first of its kind in Canada. In 1990, the United Nations commended Alberta for its progress in addressing family violence through the efforts of this office.

Alberta's current action plan defines IPV as "The abuse of power within relationships of family, trust or dependency that endangers the survival, security or well-being of another person". The action plan's guiding principles include: commitment to safety in the home; focus on primary prevention; acknowledgement that IPV is a fundamental violation of human rights; a commitment to collaborative, evidence-informed, client-centered, and a gender-based approach to acknowledge the different situations and experiences of women, men, boys and girls. The plan utilizes a lifespan perspective, and a commitment to culturally appropriate responses with shared responsibility for ending IPV including a whole-government approach.

[1] Upon completion, this report was sent to representatives of the provinces and territories for review; BC, AB, SK, MB, QC, PE, NS, NT, ON and YK responded with comments and/or additional information.

Five strategic priorities are identified:

1. Strengthen efforts to prevent family violence
2. Enhance services, support and the justice response for victims and offenders
3. Partner with diverse communities
4. Promote family and community safety through policy, legislation and public engagement
5. Evaluate, measure and demonstrate success

The Action Plan identifies risk factors at an individual, relationship, community, and societal level for both perpetrators and victims. Strategic Priority 2 is dedicated to enhancing services, supports, and the justice response for victims and offenders of family violence. Risk factors are discussed, such as poverty, housing, and unemployment as key issues that prevent victims from leaving their abusive partners. Strategies that follow include provision of basic needs, housing, education, and employment services for victims.

The Action Plan addresses maintaining and enhancing an effective justice response to IPV. For example, strategies to enhance police risk assessment, coordinate information sharing between criminal and family courts, provide victims access to legal advice, develop and implement strategies to assist with an effective and appropriate justice response for victims and offenders are outlined.

In 2009, the Province began the process of developing standardized service guidelines to ensure greater consistency in justice-linked IPV processes and programming across the 15 communities in which Alberta Health and Wellness funds services. The resulting document, the Provincial Family Violence Treatment Program (PFVTP), sets out minimum standards for referrals, assessment, treatment, monitoring of compliance, and reporting related to programs for offenders. All contracted IPV service providers are expected to comply with the standards. Standards are reviewed on an annual basis to keep current with expanded knowledge related to IPV. PFVTP services exist in every jurisdiction that has a domestic violence court as well as some others. Specifically, PFVTP programs currently exist in Calgary, Edmonton, Peace River, Grande Prairie, Fort McMurray, Hinton, Wetaskiwin, Drumheller, Red Deer, Rocky Mountain House, Airdrie, Morley Reserve, Lethbridge, Medicine Hat, and Brooks.

Programs also operate outside of the PFVTP. These programs are situated in community counselling centers and within some John Howard Society agencies. In some cases, these services are delivered by Family and Community Support Services, as described below. The Safe Communities Secretariat provides funding to increase and expand counselling services outside the PFVTP. (See Appendix A for a list of counselling services).

Risk assessment. Police based screening begins with the Family Violence Investigative Report, which is completed in all cases of IPV to identify offender risk and safety planning for victims. This assessment is included in the offender's court brief. Extremely high-risk cases are referred to the Integrated Threat and Risk Management Centre (I-TRAC), a multi-disciplinary threat assessment unit that provides a range of services related to risk assessment, such as case management, safety planning, expert testimony, referrals to community resources, and specialized police units.

Probation screens all offenders for IPV using the SPIn (Service Planning Instrument). This tool identifies service needs based on risk and protective factors in the following categories: criminal history, response to supervision, aggression/violence, substance use, social influences, family, employment, attitude, social/cognitive skills, stability, and mental health. The assessment is updated every six months. Offenders are also screened using the Domestic Violence Inventory (a self-report measure which has scales in truthfulness, violence, alcohol, drugs, control, and stress coping ability). Depending on the level of risk, probation may case conference with the police domestic violence unit to address the offender's supervision needs.

At the intake stage of treatment (within the PFVTP framework), participants' risk is assessed by treatment providers using the SARA (Spousal Assault Risk Assessment Guide) and B-SAFER. Offenders are also screened for addictions and mental health issues.

Domestic Violence Court. In communities where there is a domestic violence court, offenders who admit to the facts or are convicted of an IPV-related offence are divided into two court streams according to their level of risk for recidivism. Lower risk offenders are afforded the opportunity to enter into a 'therapeutic stream' where they admit to the facts of the charge and complete a treatment program. If the offender agrees to enter this stream, the charge is withdrawn and the offender enters into a peace bond with conditions to keep the peace, report to probation, and attend mandated treatment. Treatment includes specialized IPV programs, substance abuse treatment and/or parenting courses.

Men who are ineligible or opt out of the 'therapeutic option' are mandated into treatment upon conviction. In both cases, men are monitored through conditions of their probation order.

Structure. Communities that operate within the PFVTP adhere to specific guidelines that address how information will be shared between agencies. At its inception the PFVTP working group established an agreement under which all funded agencies were able to share information (vetted by the Privacy Commissioner – Privacy Impact Assessment). Local protocols have emerged throughout the province that allow communities to work in collaboration and share information primarily with the consent of the offender, or without consent in cases of extreme risk.

Treatment. Treatment within the PFVTP program is considered as either base or enhanced. The base model is a psychoeducational, 15-week group format (minimum of 15 weeks of 2 hour group treatment or a suitable variation of 30 hours of treatment). The preferred model is more variable and includes best-practices and evidence based therapeutic models that may be eclectic or hybrid in approach.

Groups include, at minimum, a psychoeducational component that encompasses the PFVTP core concepts. Eight core concepts are covered within the treatment program: exploring and defining abuse, responsibility and accountability, emotional regulation, skills development, boundaries, safety, substance abuse and addiction, and parenting.

Whether base or enhanced, participants are screened for risk at intake as well as for addictions and mental health issues using the SARA, B-SAFER and SPIn. Concurrent addictions and

mental health treatment is provided for those who require it through links to specialized community services. Offenders may also be referred to culturally based services as appropriate.

Group therapy is the preferred treatment modality; however, there are cases when individual counselling is deemed to be more appropriate, such as when there are significant barriers to group participation (including poor English). An offender may be offered individual counselling in addition to or as an alternative to group. In either case, the offender must complete a minimum of 15 weeks of treatment. Groups are offered in closed format and have between 8 and 15 participants (allowing some flexibility for drop-outs).

Of particular note in terms of innovative programming within PFVTP is the *"Sobering Effect"* program offered by the YWCA Sheriff King Home in partnership with the Alberta Alcohol and Drug Abuse Commission in Calgary. *Sobering Effect* is a 14-week domestic violence and substance abuse program - one of the only such integrated programs in Canada. Men attending this program have files opened in both agencies and make contact with the program 3 times a week for 14 weeks.

Parenting Impact of child witnessing. The parenting component of the PFVTP treatment group assists participants to learn new ways of interacting with and parenting their children. The impact of exposure to family violence on children, strategies to assist children exposed to family violence, and the intergenerational transmission of family violence are covered under this segment.

Integration. Every police service in Alberta is required to work in partnership with community service providers, systems, and agencies and is encouraged to establish IPV coordination committees. Many communities also have specialized IPV response teams that coordinate services to victims and assess and monitor high-risk IPV offenders. In jurisdictions where there are IPV courts, justice partners and community-based service providers work collaboratively to provide services. In Calgary, HomeFront was established to ensure coordination and integration of services within the justice system and between the justice system and the broader community. HomeFront continues to be a highly successful and innovative initiative.

Accountability to Victims. PFVTP agencies conduct partner contact as part of their core services. This contact occurs at a minimum of three occasions during an individual's treatment. Victims are offered safety checks and referrals for support. In Calgary, HomeFront offers a comprehensive, coordinated service for victims, working closely with the Calgary Counselling Centre and the YWCA.

Non-PFVTP Services

Funding. In some communities, agencies offer programs outside of the PFVTP guidelines and are ineligible for Alberta Health funding. These agencies piece together funding from different sources including alternate government funding, user fees and fundraising.

Family and Community Support Services (FCSS) exist in some communities throughout the province. FCSS is tasked with providing preventative social services at a local level in a manner

that is tailored to each community's needs and resources. They are funded in a provincial (80% o) and municipal (20%) cost sharing arrangement. FCSS provide services directly or they contract services from other community agencies. IPV treatment services fall under FCSS in some communities. Men are referred to these programs as part of a probation order.

There are a range of strategies employed by non-PFVTP service providers with respect to user fees. Some agencies charge a fee both to mandated and voluntary participants, while others offer services free for mandated participants (who are funded by the Ministry) and only charge voluntary participants (who would otherwise be unfunded). In Camrose, the Family Violence Action Society provides free services regardless of the participant's court status.

Treatment. Agencies accept referrals from probation, child protection, community agencies and in some cases self-referrals. The programs use a range of treatment modalities including narrative therapy, cognitive behavioural therapy, IPV-informed couples therapy, life skills training, and individual counselling.

Accountability to Victims. For communities operating outside of the PFVTP, victim contact is most often the responsibility of the probation officer.

Evaluation.

Tutty, L. M., and Koshan, J. (2013). Calgary's specialized domestic violence court: An evaluation of a unique model. *Alberta Law Review, 50*(4), 731-755.

Evaluation of the Calgary Specialized Domestic Violence Trial Court and Monitoring the First Appearance Court: Final Report, 2011
http: /homefrontcalgary.com/main/wp-content/uploads/2012/12/HomeFront-Evaluation-Final-Report-March-2011.pdf

Irene Hoffart and Michelle Clarke, HomeFront Evaluation. Final Report, 2004
http: /homefrontcalgary.com/main/assets/files/HomeFront%20Evaluation%20Final%20Report.pdf

Leslie Tutty, Cindy Ogden and Jacqueline Warrell, "Paths of Change: A Follow-up Qualitative Evaluation of Men Mandated to the Sheriff King Offender Groups"
http: www.ucalgary.ca/resolve/files/resolve/paths-of-change-qualitative-research-.pdf

Tutty, L. M., Jesso, D., Ogden, C., and Warrell, J. G. (May, 2011). *Responsible Choices for Men: A follow-up qualitative evaluation of men mandated to the Calgary Counselling Centre.* Calgary, AB: RESOLVE Alberta. Online at:
http: www.ucalgary.ca/resolve/files/resolve/responsible-choices-for-men-a-follow-up-qualitative-evaluation-of-men-mandated-to-the-ccc.pdf

McGregor, M., Tutty, L., Babins-Wagner, R., and Gill, M. (2002). The long term impact of group treatment for partner abuse. *Canadian Journal of Community Mental Health, 21*, 67-84. Doi: 10.7870/cjcmh-2002-0006

Tutty, L. M., Bidgood, B. A., Rothery, M. A., and Bidgood, P. (2001). An evaluation of men's batterer treatment groups. *Research on Social Work Practice, 11*(6), 645-670. doi:10.1177/104973150101100602

Innovation. A particularly notable innovation in Alberta is its integration of addiction and IPV treatment. Addiction treatment is a component of the PFVTP (based on a biopsychosocial approach). Treatment is provided by a specialized service provider who works in partnership with the IPV service provider. All attempts are made to integrate service delivery. The HomeFront program is also innovate in its work to integrate court and community services.

BRITISH COLUMBIA

Context

Legislation: *Family Law Act, 2013*
http: www.bclaws.ca/civix/document/id/complete/statreg/11025_01

Provincial Action Plan: *British Columbia's Provincial Domestic Violence Plan (2014 - 2017)*
http: www.mcf.gov.bc.ca/podv/pdf/dv_pp_booklet.pdf

Domestic Violence Court: Available in some communities.

Provincial Domestic Violence Plan

In February 2014, the B.C. government released its three-year Provincial Domestic Violence Plan (the plan). The $5.5 million plan delivers on government's commitment to make B.C. a safer place for women, children and families who are affected by domestic violence.

The plan is the result of government, public, and anti-violence stakeholder consultations and includes the creation of additional domestic violence units, programs for Aboriginal families, direct services for perpetrators, and improved access to services and social housing for survivors in rural, remote communities.

The plan addresses the very serious issue of domestic violence in Aboriginal communities by investing in culturally appropriate approaches. It is also inclusive of approaches that address the unique needs of immigrant and refugee women, and women with disabilities.

On August 5, 2015, the Provincial Office of Domestic Violence (PODV) released its *First Annual Report,* which reflected the work completed between April 1, 2014-March 31, 2015 and included initiatives/activities that continue into Years 2 and 3.

Work on the commitments for Years 2 and 3, as outlined in the plan, are well underway. The four focus areas for the investment of $5.5 million are:

- Direct services for women, children and men ($1 million)
- Direct services for Aboriginal children, youth and families ($2 million)
- Direct services for perpetrators of domestic violence ($1 million)
- Direct services for rural/remote communities ($1.5 million)

PODV will release its *Second Annual Report* in summer 2016 to reflect the work completed in 2015 16.

The Provincial Domestic Violence Plan and First Annual report are available on the PODV website at http://www.mcf.gov.bc.ca/podv/.

Domestic Violence Courts

Domestic violence courts exist in some communities in British Columbia. There are currently three distinct Domestic Violence Court models in the province, which differ in their goals and approach.

Established in 2009, the Domestic Violence Court in Duncan is a judge-led initiative that takes a collaborative and therapeutic approach to justice by bringing together various community services and government agencies. The primary objective of the court is to stop violence in relationships and keep families safe. All domestic violence offences, except the most serious offences, and *Criminal Code* section 810 applications can be scheduled in this court. Representatives from various service providers and community agencies attend the court to meet with victims and accused persons.

The Domestic Violence Court in Nanaimo was established in 2013 through a collaborative effort of the local Community Coordination for Domestic Safety (CCDS) Committee, whose membership includes representatives from government agencies and community service providers. All domestic violence related offences for adult accused persons, except for murder offences, and *Criminal Code* section 810 applications can be scheduled in this court. Similar to the Duncan Court, community service providers play a significant role in providing supports to victims and accused persons.

Domestic Violence Docket Courts have been established in Kelowna and Penticton and are primarily designed to increase efficiency and case management of domestic violence cases that have a high level of trial uncertainty so that resources in other courts can be used for cases with higher trial certainty. A Provincial Court Practice Direction sets out the types of cases to be scheduled in the docket courts and provides specific case management and scheduling requirements. Generally, the cases scheduled in docket courts are limited to less serious domestic violence offences. Cases can only be scheduled in the docket courts for trials or continuation dates unless ordered otherwise by the court. Only one Crown witness is required for each case for the initial trial date, unless otherwise set by the court.

See the Ministry of Justice's *Specialized Courts Strategy* (2016) and *Framework for Domestic Violence Courts in British Columbia* (2014) for additional information.

Risk Assessment

A number of different risk assessment tools are used throughout the province.

The Ministry of Public Safety and Solicitor General has developed standardized training for all frontline police on conducting evidence-based, risk-focused domestic violence investigations. Police are trained to use the *BC Summary of Domestic Violence Risk Factors (SDVRF)*, a tool which identifies risk factors in the broad categories of relationship history, complainant's perception of risk, suspect history, and access to weapons. Some police, including more specialized units, use more advanced tools for structured domestic violence risk assessment, including B-SAFER.

Community Corrections commonly uses SARA and the Community Risk Needs Assessment tool, which guide case management and assist probation officers in defining an appropriate level of supervision and intervention strategies.

The Ministry of Justice, Family Justice Services Division utilizes a standard initial needs screening which includes two questions for history and immediate risk of family violence. Clients that proceed to meet with a Family Justice Counsellor complete a more comprehensive risk assessment tool that was developed specifically for use within their system (Family Justice Services Assessment Form).

Court-Mandated Treatment Programs

The Ministry of Public Safety and Solicitor General funds court-mandated programs.

Structure. Court-mandated treatment is provided in two parts, collectively known as the *Relationship Violence Prevention Program*. The first part, *Respectful Relationships (RR)* is delivered by Corrections Branch staff to medium and high-risk offenders (as assessed by corrections). The second segment, *Relationship Violence Program (RVP),* is contracted out to Stroh Health Services in 45 communities throughout the province for moderate and high-risk offenders upon completion of *Respectful Relationships*. Information regarding the offender's progress is shared with corrections throughout participation in RVP and a final report is submitted at program completion. Attendance is reported after every group, as well as any concerns regarding escalation of risk.

Additionally, RR is co- facilitated in designated Aboriginal communities by Probation Officers and Aboriginal Justice Workers (AJW) with a specific focus on culturally appropriate facilitation. Since 2005, 130 AJWs have been trained in RR. AJWs utilize that training by co-facilitating offender programs with probation officers and provide a cultural focus to the program. AJWs also facilitate domestic violence programs in their communities providing services to women, men, young people and couples.

The Ministry of Public Safety and Solicitor General has also contracted with a number of agencies in the Lower Mainland to deliver the RVP Cultural Edition to men in a range of

languages including Punjabi, Farsi, Cantonese and Mandarin in either a group or individual format.

The *Relationship Violence Prevention* Program (RVPP) was evaluated in 2008 by BC Corrections. Specifically, results found a 50% reduction in spousal-assault related recidivism and a 60% reduction in general recidivism for men who completed RVPP in the community as compared to a comparison group of men who just received community supervision. Effects persisted over a two-year follow-up period, with lessor recidivism among men who complete both components of the program.

Respectful Relationships and *Relationship Violence Program* are offered in a number of jurisdictions throughout Canada in a standardized format. A description of these programs is provided in Box 1.

Box 1

Respectful Relationships

Format:
10-week closed group, 2 hours per week delivered by trained Corrections Branch staff. 8 – 10 individuals per session.

Therapeutic modality:
Psycho-educational, cognitive behavioural model.

Program Elements: Understanding abusive behaviour; the impacts of violence on victims and children, strategies to manage emotions and behaviour; problem-solving skills

Section Two: Relationship Violence Program

Format:
17-week closed group. 8 – 10 members.

Therapeutic modality:
Cognitive behavioural program that utilizes goal-oriented teaching methods.

Program elements: What creates conflict; personal awareness; influence of family and friends; challenging thinking; identifying and managing emotions; jealousy; sex and intimacy; review and integration; communication skills; problems solving; resolving conflict; fatherhood; and relapse prevention.

Parenting Impact of child witnessing. A session on fatherhood is included in the *Relationship Violence Program.* This session covers the following topics: children learn what they live; the abuse of children wheel; the nurturing wheel; parenting guidelines; 5 good reasons to stop spanking; how to deal with your child's difficult behaviour; positive discipline; and using a time-out.

Accountability to Victims. Victim contact is often the role of victim services, Corrections, and Bail Supervisors, however some service providers incorporate contact with victims into their program. The purpose of this contact is generally to explain the program, to aid in risk assessment, and to ensure that the victim has access to safety planning and resources. Some community-based services provide parallel groups and individual support for victims.

Community-Based Perpetrator Treatment Services

The Ministry of Public Safety and Solicitor General is currently undertaking work on the development of intervention programs for perpetrators of domestic violence prior to involvement in the criminal justice system, including the enhancement and evaluation of culturally appropriate programs for Aboriginal communities. In April 2015, $1 million was made available to support this work as part of the Provincial Domestic Violence Plan.

Currently, community-based perpetrator treatment service providers and private practitioners provide treatment for men who are not court mandated in locations throughout the province. These programs are typically funded through the agency's fundraising efforts, small grants, or client user fees.

While there is no direct link between these community-based programs and the Courts, some participants involved in the criminal justice system access or are referred to these agencies for service. Information sharing is limited between BC Corrections and the agency providing services and generally shared only with the consent of the participants. The agency provides participants with a letter confirming attendance in the program. They do not provide assessments or letters of support. Programs vary in therapeutic orientation, duration and the information that is covered.

Two of the larger, community-based programs are described below:

Northern Society for Domestic Peace
Domestic Peace Program
Smithers, BC (http://www.domesticpeace.ca/about.html)

Funding. The Domestic Peace Program is funded through a BC Gaming Commission grant and the agency's fundraising.

Structure: The Domestic Peace Program provides services to high-, moderate- and low-risk IPV offenders. The program is considered voluntary, however referrals are made to the program for court mandated offenders by probation. The program does not provide assessments to the court but will confirm attendance following the completion of 12 sessions. The program is available to men for as long as they require.

Risk Assessment. Risk assessment is an ongoing process entrenched in working with the client. Counsellors utilize formal tools such as the "Abuse Inventory" (developed from the SARA and ERA), as well as the B-SAFER and SARA and the Signs of Safety (Andrew Turnell). They also

may engage collateral contacts, such as the participant's current/separated partner, to ensure they have a fulsome picture of the participant's risk profile.

Treatment. Prior to attending the Domestic Peace Program, participants complete a minimum of 12 hours of individual counselling. Services are founded in a 'response-based approach'. The therapeutic focus is on choice and volition, positioning themselves as the subject of their actions, both violent and nonviolent and embracing the ability to consistently choose to treat their partners respectfully. ("Approaching the Subject of Violence: A Response-Based Approach to Working with Men who Have Abused Others", Nick Todd, Gillian Weaver-Dunlop and Cindy Ogden, Violence Against Women 2014, 1117). Participants complete an evaluation at the end of the program. Follow-up is done at 6 months and 1-year post completion.

Accountability to victims. Participants must agree to partner contact in order to be eligible for service. Victims are contacted by the therapist working with the participant to assess concerns and offer support, such as safety planning and links to community services. The agency also provides treatment services to victims, therefore can 'wrap around' the family where needed. In cases where the victim is not a client of the agency, victim contact happens at the beginning of program and at program completion.

Integration. The Northern Society for Domestic Peace operates within a collaborative framework. The Community Coordination for Women's Safety committee membership includes key stakeholders including police, victim services, corrections, and child protection services. The committee focuses on systemic change. The community recently established an Interagency Case Assessment Team (ICAT) to address the needs of high-risk offenders.

Northern John Howard Society
Stop Taking it Out on Your Partner
Prince George, BC (http://thestopprogram.com/)

The Northern John Howard Society provides a program in Prince George entitled "*Stop Taking it Out on Your Partner*" (PG STOP).

Funding. PG STOP has been providing services to voluntary participants for 20 years. It is currently funded through grants and the local United Way.

Structure. While men's participation in the program is voluntary, the Ministry of Social Development and Social Innovation and Probation and Parole refer many court mandated offenders to the program. Information is shared with the referral source only with the consent of the participant. Following program completion, participants are provided with a pass or fail. Those who do not successfully complete the program are permitted to repeat it.

Risk Assessment. Services are provided to high- moderate- and low-risk offenders. Risk assessment is not formally completed, however counsellors utilize professional judgment to monitor the changing risk profile of participants.

Treatment. The program draws on a variety of therapeutic treatment modalities, including psychodynamic, humanistic, and cognitive behavioural therapy. The materials are divided into 8 units delivered over 15 weeks in three-hour sessions. Topics include anger management, using anger in a positive way, emotional control, positive self-talk, how the emotional system works, anger and response/reaction, anger log, time out technique, toxic shame, self-esteem, forms of violence, effect of violence on children, communication, active listening, empathy and conflict resolution and 'letter of responsibility'. Participants are able to see the counsellors individually for follow up when they have completed the program.

Accountability to Victims. Victims are contacted and granted access to a support group for spouses. To ensure continuity, the counsellor that works with the offender will facilitate the partner group.

Evaluation. The Stop Taking it Out on Your Partner program was evaluated in 2013 (*Reducing the recurrence of domestic abuse among male intimate partners: a case study of the PG STOP violence program of the Northern John Howard Society of British Columbia*, Chiduzie Ezedebaego, UNBC Masters student).
http: www.thestopprogram.com/images/sampledata/PDF/thesis.pdf

MANITOBA

Context

Legislation: *The Domestic Violence and Stalking Act*

Domestic Violence Court: Available in Winnipeg

Provincial Action Plan: Manitoba – Multi-year Domestic Violence Prevention Strategy (2012)
http: www.gov.mb.ca/asset_library/en/stoptheviolence/domestic_violence_prevention_strategy_2012.pdf

Manitoba's Action Plan was developed through a public consultation process focusing on what needed to be improved in prevention and direct services, a review of funded services, and a literature review focusing on how to promote healthy, equal relationships.

IPV is defined as "in most cases, perpetrated by men and mainly against women and children. Violence exists in many types of intimate relationships: in heterosexual and same-sex relationships (currently or formerly dating, married or living together). While certain factors may increase the risk of abuse, domestic violence happens to people from all walks of life". The document notes that 80% of victims in dating and spousal violence are women; that women are more likely than men to be severely assaulted, sexually assaulted, choked or threatened with a weapon; and more than twice as likely to be injured.

Supports and services for victims and families are woven into the Plan.

The goals of interventions for "people with abusive behaviours" are focused on eliminating abusive behaviour, managing risk, and holding offenders accountable. Therapeutic recommendations include endorsement of community based counselling programs to eliminate abusive behaviours. Offender management and accountability recommendations target an enhanced criminal justice response, specifically domestic violence courts, specialized domestic violence police units, specialized Manitoba Justice Victim Services Domestic Violence Support Service, prosecution and probation units, case management of high-risk men, standardization of risk assessment tools for police (Family Violence Checklist), and the Front-End Project, which was designed to eliminate trial delays.

Risk Assessment: Risk is assessed by police services using the *Family Violence Risk Checklist* for all domestic violence related occurrences. (http: www.learningtoendabuse.ca/sites/default/files/Inventory%20of%20spousal%20violence%20risk%20assessment%20tools%20used%20in%20Canada.pdf).

Probation uses the Level of Service/Case Management Inventory (LS/CMI) to assess offender risk and determine appropriate case management strategies and programming needs. Community based programs do not typically utilize formal risk assessment tools but monitor the offender's progress using unstructured professional judgment.

Manitoba Justice Victim Services uses a variety of tools to assess risk including the Danger Assessment and the Family Violence Risk Checklist. Victim Services Workers use these tools in combination with their professional judgment gained through years of experience and training, to provide Crown attorneys with detailed information highlighting risk to victims.

The Manitoba Justice - Domestic Violence Support Services helps victims of domestic violence when criminal charges have been laid, or may be laid against their partners. Manitoba Justice Victim Services Workers explain the cycle of violence, how the cycle may affect victims and their families and how to escape from it. They also help victims to develop protection plans to increase their personal safety. The program also provides support to families who receive police services for domestic violence incidents that do not result in charges or arrests (Winnipeg only).

This program in partnership with the Winnipeg Police identifies families that are high-risk for IPV but where there are no grounds for criminal charges. The potential victim in the family is provided with support through the Domestic Violence Support Service.

Domestic Violence Court. The Winnipeg Domestic Violence Court has an early intervention and a rigorous prosecution stream. The Domestic Violence Unit of the Manitoba Prosecution Service reviews each IPV case prior to the accused's first appearance to designate the most appropriate court stream.

Post charge diversion is recommended for those who are first time, low risk accused individuals who are willing to accept responsibility for the offence. Prior IPV or other violent offences, use of weapons, and/or serious physical injuries to the victim, disqualify the accused from having the charges diverted. Those deemed eligible for post charge diversion are mandated to obtain counselling that includes domestic violence counselling through the Salvation Army Choose 2

Change program or such other program deemed appropriate by the prosecutor. If the accused successfully completes the programming and if the accused, in the appropriate case, agrees to enter into a peace bond for a period of one year, then the Crown will stay proceedings on the charge.

The prosecution court stream targets moderate to high-risk accused and those who opt out of diversion. Offenders are mandated into treatment following conviction to the *Introduction to Healthy Relationships* followed by the *Making A Connection* program, the *Evolve Men's Program* or culturally specific intervention.

Introduction to Healthy Relationships (IHR) is a 3-hour information group, which is funded by Manitoba Justice for low to medium risk offenders in any stage of change, with additional follow-up with the Probation Officer in the community. Offenders are asked to complete a survey identifying their "stage of change" with respect to their relationship and readiness to make changes in their life. Offenders are taught what a healthy relationship is, where people learn about relationships and discuss gender socialization, trauma and the impact of domestic violence on children and victims. The cycle of abuse and CBT model of human behaviour (thoughts, feelings, behaviours, consequences) are introduced.

A small number of adult offenders are designated by Probation Services to be high risk offenders in the area of domestic violence. These offenders are supervised by a specialized unit within Probation Services. This specialized unit obtains input during regular monthly meetings from police, Victim Services, a Corrections Officer from Headingly Correctional Center, and a prosecutor from the Domestic Violence Unit. Electronic Monitoring may be an element of probation supervision of these high risk offenders.

The Thompson Domestic Violence Treatment Option (DVTO) Court is a post-charge diversion court option for first time, low-risk offenders within the City of Thompson. Offenders are screened by the Crown to determine eligibility to enter the DVTO Court. Similar to the Court in Winnipeg, offenders are ineligible who have caused significant physical injury to their victim. Offenders who opt out of the DVTO Court or are ineligible are remanded to the prosecution stream.

The Manitoba Metis Federation Community Justice Worker completes the intake process for offenders in the DVTO stream and refers them to Men are Part of the Solution (MAPS). If the offender successfully completes the program they return to the DV Court for disposition of the charge.

Moderate- to high-risk offenders are sentenced to treatment provided by probation or are referred to MAPS upon conviction.

Low Risk

Choose 2 Change
The Salvation Army

http: mb.salvationarmy.ca/

Risk Assessment. The program uses indicators to assess risk, such as stage of change, level of responsibility, substance use, cooperation, and behaviour in the group.

Funding. Choose 2 Change program receives no external funding and charges participants on a fee for service basis.

Structure. Choose 2 Change receives referrals from the *Alternatives* court program. The program also accepts self referrals and referrals from community agencies. Information is shared with the *Alternatives* program regarding the offender's participation. Specific information regarding the offender is not shared.

Treatment. Choose 2 Change is a closed psychoeducational group, which employs some cognitive behavioural and narrative elements. The program consists of a 2-hour intake assessment, 21 hours of group work and a 2-hour closing meeting. The group work takes place over 3 sessions, each 7-hours in duration. The program covers different types of abuse, effects of abuse, beliefs and values, socialization and gender roles, self-talk, warning signs, time outs, cycle of abuse, substance abuse, children and non-violent parenting, and healthy relationships.

Parenting Impact on child witnesses. Information related to the impact of witnessing IPV on children and non-violent parenting strategies are incorporated into the treatment group.

Accountability to Victims. Manitoba Justice Victim Services attempts to meet with all victims of domestic violence and refers matters appropriate for Choose to Change to Prosecutions Services. Victim Services also attempts to notify all victims that their (ex)partners have entered the Choose to Change program.

Integration. The program works in collaboration with justice partners associated with the *Alternatives* program.

Evaluation. The *Choose 2 Change* program is currently undergoing evaluation through *Resolve* (a tri-provincial research network formally known as the Manitoba Research Centre on Family Violence and Violence Against Women http://prairieaction.ca/projects/resolve-network).

Moderate- and high-risk
Offenders at moderate and high-risk to reoffend are referred, post-conviction, to a number of possible programs including Making a Connection (MAC), Evolve and culturally specific treatment.

Making A Connection (MAC)
Community and Youth Corrections
http: www.gov.mb.ca/cgi-bin/print_hit_bold.pl/justice/criminal/corrections/index.html

Risk Assessment. The LS/CMI is used by probation to identify specific criminogenic needs and informs the case management process for each offender. A final report is given to the probation officer upon program completion.

Funding. The *MAC* program is funded by Manitoba Justice.

Structure. *MAC* is specifically for high to very high risk offenders who are minimally in a contemplative stage of change and mandated to attend treatment post-conviction. Offenders must complete the *Introduction to Healthy Relationships* program prior to entering *MAC*.

Treatment. The *MAC* program consists of 17, 2.5 hour sessions. The program draws on motivational interviewing, solution focused therapy, narrative therapy, and risk-needs-responsivity principles. Offenders examine different aspects of their lives, including criminality; past and present relationships; the impact of their behaviour on others; defence mechanisms; and communication. Trauma, grief, loss, and self care are also explored. The segments on behaviour, values, beliefs, self-talk, and managing emotions are delivered using CBT principles. Healthy relationships, balance, warning signs, time out plans and relapse prevention are reinforced. The group uses controlled breathing practice in every session. Offenders are not blamed or forced to disclose the circumstances of the charge; however, they are encouraged to take responsibility for their actions.

Parenting Impact on child witnesses. The program includes information on attachment theory and trauma which may lead to some discussion of parenting, however, there are no specific segments addressing parenting.

Victim Accountability. The program does not have any contact with victims. Victims are contacted and supported by Victim Services.

Integration. The Domestic Violence Advisory Committee (DVAC) provides direction to Senior Management in the development and implementation of policy and programming across the Community Safety Division (formerly Manitoba Corrections) for the province and liaises with other government and non-government stakeholders.

The Evolve Men's Program
Klinic Community Health Centre in Winnipeg. http://www.klinic.mb.ca/landing.html.

Risk Assessment. The program targets offenders post-conviction who represent all levels of risk (as assessed by the referral source).

Funding. *Evolve* is funded by the Winnipeg Regional Health Authority (a provincial government body overseeing the implementation of health and social services programs across the Winnipeg health region).

Structure. Offenders are referred to the program primarily by probation (post-conviction) and child protection services. The program also accepts referrals from community agencies and self

referrals. Information is shared with the referring agency when requested and with permission of the offender.

Treatment. The work is informed by Narrative therapy practices (Alan Jenkins), and psychoeducational theory. Prior to entering the group, offenders attend 2 intake interviews. Depending on their needs, offenders are offered individual therapy to prepare them for the group. The total program is 10 12 months in duration followed by individual therapy where indicated. Continued participation in the program is voluntary.

Evolve is delivered in a 2-stage format.

Stage one: *The Preparatory Stage*: This program is an open group format which runs for 20 weeks, two hours per week, with a maximum of 10 participants. Delivered in a psychoeducational format, the group covers the following topics: boundaries, stress management, mindfulness, feelings, brain functioning, problem solving, healthy relationships, male social expectations, assertiveness, communication, change, self-care, and relaxation.

Stage two: *Men's Closed Group.* This is a 20 week closed group (3 hours/week), which is co-facilitated by a therapist and a peer mentor (program graduate). Men share their life story, current situation and why they are there, their experiences of abuse in their lives, express repressed feelings, especially shame and practice being vulnerable. They are expected to write a letter about their abusive behaviour from the perspective of their partner and children and share with it the group. Maintenance and relapse prevention plans are discussed.

Parenting Impact of child witnessing: Information related to the impact of witnessing IPV on children and non-violent parenting strategies are incorporated into the treatment group.

Accountability to Victims. Victims are contacted while the offenders are attending the closed group to share threats of harm or any concerns related to the victim's safety. Victims are offered *Evolve Women's Program* and couples counselling is available where requested and appropriate (i.e., no threat of harm).

Integration. Evolve works in collaboration with the Family Violence Consortium of Manitoba, the Addiction Foundation of Manitoba and the Men's Resource Centre.

Evaluation. The Evolve program for moderate risk offenders was evaluated as a pilot project. (http: www.klinic.mb.ca/docs/FINAL%20REPORT%20rev%204.pdf)

Men are Part of the Solution (MAPS)
www.menarepartofthesolution.com/programs

Funding. MAPS is funded primarily by the Thompson Urban Aboriginal Strategy.

Structure. Referrals are received from probation, social agencies, lawyers, public health, and self referrals.

Treatment. Participants are seen individually for a pre-group screening interview which is done by the Manitoba Metis Community Justice worker attached to the Thompson DVTO Court.

Treatment is provided in 2 segments and takes approximately 4 months to complete. Segment one consists of 12 weeks (2.5 hours per week) of group therapy. The group is either open or closed and has 8 to 10 participants. Using a psychoeducational treatment modality, the group addresses anger cues, time-outs, self-care, self-talk, beliefs, cost and rewards of anger, feeling vocabulary, funnel, shame and guilt, the pressures of masculinity, values, identity, relationship loss, self-esteem and health relationships.

The second segment of the program consists of 8 individual counselling sessions (1.5 hours per week).

Follow-up short-term counselling is available for group participants upon completion of the program.

Culturally Specific Programming

Manitoba Métis Federation (MMF)
www.mmf.mb.ca/departments_portfolios_and_affiliates_details.php?id=3
MMF Domestic Violence Program

Funding. MMF does not receive funding for this program.

Structure. Services are provided in Interlake, Thompson, Winnipeg, The Pas and Dauphin. Manitoba Metis Federation provides intake services for the Thompson DV Treatment Court, referring offenders for treatment. In jurisdictions where there is no DV Court option, MMF provides services through the Aboriginal Justice Courts. Offenders are referred for treatment from probation, the Courts and self-referrals. Information is shared through service agreements with the Court. MMF has established partnerships with Addiction Foundation of Manitoba for addiction assessments and services throughout the province.

Treatment. Treatment is provided in a group format, drawing from anger management and CBT treatment modalities. The group includes 14 sessions provided in a closed format with a maximum of 10 participants. Topics covered are anger management, the cycle of violence, values and beliefs, communication skills, conflict resolution, defence mechanisms, timeout and safety planning and the impact on children witnessing domestic violence.

Accountability to Victims: The program does not have contact with the victim, however services are often provided to couples who will attend an anger management group together after the offender has completed the DV Program.

Spirit of Peace (First Nations Program)
Ma Mawi Chi Itata Centre
http: www.mamawi.com/

Risk Assessment. Counsellors monitor risk using unstructured professional judgment and will refer to specialized services as required, such as mental health and addiction services.

Funding. Spirit of Peace receives funding from the Federal and Provincial government.

Structure. Referrals are received from the courts and from probation for mandated IPV offenders. The program accepts all IPV offenders and does not differentiate among levels of risk. The program also accepts voluntary clients, who most often self refer. Information is shared with probation only with the offender's' consent.

Treatment. The Spirit of Peace program is 8 weeks, 5 hours per week in duration. Utilizing psychoeducational and narrative therapy, the program covers the following areas: cycle of violence, why people remain in abusive relationships, managing toxic anger, anger incident review, time outs, relationships and jealousy, letting go of the need to control, zero tolerance, crisis preparation planning, substance abuse and violence, changing beliefs, impact of IPV on children, sharing circle, anger and relapse prevention. Smudging and sweetgrass ceremonies begin each group, Aboriginal customs, practices and values are woven into the group content.

Parenting Impact of child witnessing. Information related to the impact of witnessing IPV on children is incorporated into the treatment group.

Accountability to Victims. Ma Mawi Chi Itata Centre offers a women's and children's group. Counsellors working with offenders do not have contact directly with victims.

Innovation. The Winnipeg Police Service identifies families who have been involved with the police and are considered to be at risk of IPV. The family member identified as most likely to be victimized is offered assistance for herself and also potentially for her partner.

NEWFOUNDLAND/LABRADOR

Context

Legislation: *Family Violence Protection Act*

Domestic Violence Court: Not currently available.

Provincial Action Plan: *Taking Action Against Violence: Violence Prevention Initiative (2006 – 2012)* (http: www.gov.nl.ca/VPI/initiative/actionplan2006_2012.pdf)

Taking Action Against Violence is built on the premise that the social and cultural roots of violence are based in gender inequality and that women from diverse backgrounds are especially vulnerable (ability, sexual orientation, ethnicity, economic status). The mission and mandate statements do not specifically address therapeutic services for perpetrators, however the guiding principles address enforcement and accountability.

Taking Action Against Violence was led by a committee of Ministers (Health, Community Services, Education, Human Resources, Labour and Employment, Aboriginal Affairs) and was chaired by the Minister Responsible for the Status of Women.

Key investments resulting from the plan include public education, operational funding for transition houses and support for community collaboration in the form of Regional Coordinating Committees. There are 10 committees throughout the Province made up of representatives from community-based service providers and justice partners. The Plan also supported the creation of a Community Advisory Committee composed of representatives from organizations working with government and regional coordinating committees to act as a liaison and the conduit of information between government and front-line organizations.

The Justice Minister's Committee of Violence Against Women meets to discuss issues related to the justice system response to IPV. It is composed of the Justice Minister, justice officials, police agencies and representatives from community groups such as the Provincial Advisory Council on the Status of Women, John Howard Society and the Sheshatshiu Innu First Nation.

Family Justice Services, the service which assists families in resolving separation and divorce, screen for domestic violence and refer to Victim Services where concerns exist regarding the safety of women and children. Victim Services is mandated to create safety plans or refer to community services as indicated.

Until losing funding in 2013, the Province had a Domestic Violence Court. The Lt. Gov. promised to reinstate the court and expand it to reach more of the Province. (http: www.releases.gov.nl.ca/releases/2013/just/1120n10.htm)

The Royal Newfoundland Constabulary (RNC) and the RCMP have designated Domestic Violence Coordinators who are mandated to work collaboratively with community partners.

Risk Assessment. The RNC designated a Domestic Violence Coordinator in 2013. Police use the Family Violence Investigation Report (FVIR) for all domestic violence occurrences. FVIR highlights history of IPV, escalation, victim's perception of IPV and any aggravating factors that potentially impact the victim's safety.

Funding. Services for DV offenders referred by probation are provided through the *Learning Resource Program* (LRP) of the John Howard Society in three locations in the Province - Cornerbrook, St. John's, and Stevensville. These programs are funded for treatment of court-mandated clients by the Department of Justice. The provincial government subsidizes the "Advanced Education and Skills" program offered by John Howard.

Structure. The John Howard Society receives referrals from Probation and Corrections Canada who assess the offender's risk using the LSI. The agency also accepts self-referrals from men who wish to access services on a voluntary basis. Every month an assessment of the offender's progress is completed, addressing needs and risks using the SARA. This report is shared with the referring agency.

In the case of high-risk offenders, a monthly progress report is also shared with the Family Violence Risk Threat Assessment team with the consent of the offender and the victim. The Family Violence Risk Threat Assessment team is comprised of John Howard Society, Victim Services, the RCMP, RNC (Royal Newfoundland Constabulary), the Crown Attorney, and Child, Youth, and Family Services. The team identifies high-risk domestic violence offenders (on bail, just out of jail and on probation) and meets to monitor the offender and to support the victim.

Treatment. All offenders receive the *Respectful Relationships* program (see British Columbia for a complete description). This program is delivered by probation.

Probation refers moderate to high-risk offenders to the John Howard Society, *Learning Resource Program (LRP)*. Probation shares any previous risk assessments, the offender's current LSI assessment, any previous recommendations for treatment, and the offender's criminal history. John Howard Society uses the SARA to determine program needs. With the exception of the Caring Dads program, the LRP is not specifically for IPV offenders. The groups offered are designed to be either moderate or high intensity and are structured to meet the group's particular needs. In some instances, the agency will provide individual counselling. Groups are based in a cognitive restructuring treatment modality. The core groups are:

Anger Management: a program for moderate-risk and high-risk offenders who have difficulty in managing their anger.

Advanced Education and Skills: The Modular Aptitude Assessment Program consists of basic job readiness skills, resumé writing, and specific job skills obtained through various workshops and work placements.

Caring Dads: See Ontario for program description.

Group for Criminal Behaviour Awareness: is a continuous intake, 20- to 25-week program offered in conjunction with anger management, and designed to target antisocial attitudes and values, pro-criminal associations, substance abuse, and antisocial behaviour patterns.

Sex Offender: The LRP is the treatment program through which secondary-risk assessments are provided for sex offenders.

Maintenance: The Maintenance program supplements group therapy by providing high-risk clients up to 6 additional sessions with a counsellor either during or following completion of a specific program. The objective of maintenance is to develop relapse prevention strategies, reinforce knowledge, skills and positive changes achieved through the group therapy process.

Individual Counselling: For individuals whose needs do not fit into an existing group, the agency offers individual counselling.

Once an offender has completed the program, a discharge report is submitted to the referring agency summarizing the offender's' progress in the program and making recommendations regarding other programs that may be considered.

Parenting Impact on child witnesses. *Caring Dads* (see Ontario for program description).

Accountability to Victims. Partner contact and partner support are not included as a component of service for either low or moderate-high risk offenders. However, the John Howard Society does work in collaboration with women's services to ensure that changes related to risk are shared and that victim safety planning is completed. In addition, for high-risk offenders, victim services are included as part of the Family Violence Risk Threat Assessment team.

Integration. The John Howard Society is a member of the Family Violence Risk Threat Assessment team.

Innovation. To address geographical barriers, the agency is exploring the use of video conferencing for IPV and sexual violence treatment and video conferencing for counselling. Video conferencing is also used to conduct suicide risk assessment for high-risk inmates while incarcerated.

NEW BRUNSWICK

Context

IPV Legislation: N/A

Domestic Violence Court: A Domestic Violence Court exists in Moncton and services the counties of Kent, Westmorland, and Albert.

Provincial Action Plan: *A Better World for Women: Moving Forward (2005 – 2010).* https: www.gnb.ca/0012/Violence/PDF/movingforward-e.pdf

The Government of New Brunswick established a Minister's Working Group on Violence Against Women in 2000 to develop an action plan addressing violence against women. The group presented recommendations in 2001. The first 3-year action plan, *"A Better World for Women"* was launched to address these recommendations.

"A Better World for Women: Moving Forward" is the Province's second plan. Targets of the Plan include the establishment of a specialized court model to enhance women's safety, education and prevention, leadership and coordination and transitional supports for women, and services to women and children.

Services and supports for victims and children exposed to IPV are discussed throughout the Plan. Strategies regarding treatment for perpetrators are entrenched within the IPV court model.

Provincial coordination exists in New Brunswick through the "Provincial Partnerships In Action Committee". This Committee is coordinated by the Women's Equality Branch, Executive Council Office, and the Government of New Brunswick. The Committee is the parent body of

the IPV committees across the province that are made up of key stakeholders representing government and non-government agencies.

The Domestic Violence Court was established in Moncton in 2007. The court model includes coordinated services for victims. Probation officers, who function as case managers, assess risk, treatment needs, arrange for and monitor the offender's progress and report back to the court. Monitoring typically begins 6-weeks post sentencing, or for incarcerated offenders, 2-weeks post-release. Offenders are required to attend 1 to 3 monitoring sessions. As with other domestic violence court models, the Moncton court provides expedited access to IPV intervention programs for low risk offenders who accept responsibility for the offence and meet eligibility criteria for program admission

The Domestic Violence Court facilitates sharing of information between the criminal and family divisions through the Court Coordinator. Information, such as child protection orders and custody and access restrictions are shared to align criminal and civil restrictions in IPV cases.

Risk Assessment. In 2014 the provincial government adopted the Ontario Domestic Assault Risk Assessment (ODARA) as the standardized risk assessment tool for police services. Probation uses 2 tools; ODARA, and the Level of Service/Case Management Inventory (LS/CMI). These instruments assist in identifying a number of potential treatment needs including addiction treatment, mental health services, domestic violence intervention and prevention programs. Probation refers offenders to treatment based on their needs and level of risk and reports the offender's progress to the Court through monitoring sessions.

Treatment for offenders streamed through the DV court in Moncton are provided by the John Howard Society's Domestic Violence Program for Men and Women or the Centre de ressources et de crises familiales Beauséjour. Treatment across other regions of the province are provided by a number of other independent agencies for probation mandated clients.

Funding. All interventions for mandated IPV offenders are funded by the Department of Public Safety.

Interventions Associated with Moncton's DV Court
There are two streams of services provided for domestic violence programs. The John Howard Society delivers a low-risk program for both men and women. The Beauséjour Family Crisis Resource Centre Inc. delivers a program for moderate- and high-risk offenders (Narrative Therapy Domestic Violence - High Intensity Intervention).

John Howard Society (JHS)
Moncton, New Brunswick
http: www.johnhowardsenb.com/

Moncton Probation refers offenders to the appropriate program and attendance is mandatory. JHS provides a final report addressing progress and goals obtained by the offender. The report is shared with Probation.

Risk assessment. JHS does not conduct risk assessment. Group facilitators monitor client's risk during group using unstructured professional judgment and report any escalation in risk to the probation officer immediately.

Domestic Violence Program for Men – Low Intensity

Treatment. The Domestic Violence Program for Men - Low Intensity consists of 10 sessions, each 2 hours in duration. Topics include defining different types of abuse and recognizing associated behaviours, cycle of violence, power and control, communication, changing beliefs and behaviours, conflict, journey to health through grief and loss, sex role stereotyping, self-talk and planning for the future. The group utilizes a CBT treatment modality.

Narrative Therapy Domestic Violence - High Intensity Intervention

Structure. Mandated offenders are referred to the program by Public Safety, Probation Services. Information about the offender's attendance and any behavioural concerns are shared with the offender's probation officer. At week 8 a 'cost/benefit analysis' is completed and shared with probation. Offenders are given a pass/fail at the end of the program as well as a clinical report that outlines his progress and outcomes achieved.

Treatment. The program is based on the Bridges program (narrative therapy and CBT) and is designed specifically for high-risk offenders. The program is 16 weeks in duration, 2-hours per week. Prior to attending group, offenders participate in 3 individual sessions to prepare them for the group.

Information covered in the group includes re-authoring identity, abuse and gender, taking responsibility, defining distractions, relapse prevention planning, how to heal and repair from abuse, how to listen, how to share, economic respect, sexual respect and a letter of apology.

Parenting Impact on child witnesses. Information regarding the effects of abuse on women and children are incorporated into the group treatment.

Accountability to Victims. Partner contact is done through the agency's women's outreach services. There is no information sharing between women's outreach and the men's intervention programs.

Centre de ressources et de crises familiales Beauséjour
Shediac, New Brunswick
http: www.criseshediacrisis.org

Risk assessment. Beausejour relies on the risk assessment done by the police and the Probation Officer. Men who score in the moderate to high range on ODARA are referred to the program.

Funding. Beausejour is funded through the Department of Public Safety.

Structure. The program receives referrals from the Moncton Domestic Violence Court. Information regarding attendance is shared weekly with probation in addition to any behavioural concerns. The Agency submits a mid-program assessment and a final report at program completion to the Probation Officer.

Treatment. The program is based on the Bridges program (narrative and CBT) and is designed specifically for high-risk offenders. The program consists of 16 weekly sessions, each 2 hours in duration. Offenders must participate in 3 individual sessions prior to beginning the group. Group sizes range from 5 - 8 participants up to a maximum of 12. The group is based on Narrative Therapy and includes 4 stages: Preparing to Take Responsibility; Stage 2: Formalize Relapse Prevention Plans-Past Incidents of Abuse; Stage 3: Studying the Effects of Abuse; Stage 4: Healing and Repairing the Effects of Abuse. The following elements are part of the curriculum; cost benefit/ analysis of violence, taking responsibility for our behavior, types of violent behaviours, attitudes and beliefs associated with domestic violence, socialization, understanding the impact of abuse on others, cognitive restructuring using CBT, emotions management (anger, jealousy, shame and guilt), problem solving, communication techniques, healthy relationships, intimacy and sex, social expectations and our behaviors, empathy interview (role reversal), forgiveness, healing, making better choices and, writing the next chapters in your life.

Parenting Impact on child witnesses. The program has incorporated materials from the *Caring Dads* program.

Accountability to victims. The program does not have contact with victims. The Department of Public Safety, Victim Services offers the full range of services to victims including referrals to counselling, court preparation, crime compensation program, victim impact statements and notification of offender release. Recognizing that the victim is a voluntary client, and therefore the decision maker, Victim Services Coordinators explain safety planning and encourage the victim to participate in the completion of an Aid to Safety Assessment and Planning (ASAP) evaluation and the Danger Assessment. The Victim Services Coordinators provide advocacy and support throughout the criminal justice process.

Programs with no association to Moncton's DV Court

Other regions of New Brunswick are not served by the DV court. In these areas, a number of agencies provide service to probation-mandated offenders. There has been a consistent effort in New Brunswick to keep treatment for low and high-risk offenders separate and funding may be provided to different agencies to serve offenders at differing risk levels. Currently, New Brunswick is reviewing and modifying its approach and there is a great deal of uncertainty around services. Two of the agencies with established histories and programs for offenders are described below.

Options Men's Program
Empathic Life Solutions
http: empathicsolutions.ca
Moncton, NB

Risk Assessment. The program does not conduct risk assessments or provide a differential response based on level of risk.

Funding. The *Options Men's Program* is funded by the Department of Social Development (DSD).

Structure. Referrals are received by DSD social workers, community therapists, physicians and men who self-refer. Information is shared with referral sources through consent of the client. Probation services may also refer participants, however justice referred participants are a minority of those served by the Options Men's program.

Treatment. The program includes 12 weekly sessions, each 2 hours in duration. The group content is based primarily in Narrative and Cognitive-behavioural Therapy. Information covered includes values for intimate relationships, values as a father, social expectations of men, expectations of men's and women's roles in relationships, re-authoring shame, values for self, defining abuse, taking responsibility, distracting ideas and behaviours, warning signs of escalation, managing escalation of emotions, challenging thinking, empathy, effects of IPV on victims and children, healing or repairing effects, apology, forgiveness, managing expectations, and specific actions regarding making changes.

Impact of child witnesses: *Caring Dads* (see Ontario) is currently being offered through the *Options Men's Program.*

Accountability to Victims. Victims are offered a parallel group called *Options Women's Group.* Options use the Danger Assessment in victim safety planning.

***Alternatives* Program**
Restigouche Family Services
Campbellton (NB) (506) 753-4161
http: www.bdaa.ca/biblio/apprenti/sante/petits/15.htm

Risk Assessment. Offender risk is assessed by the Restigouche Family Services using SARA. The intervention plans for individual offenders are based on this assessment and risk information is shared with those who provide support to victims. Risk assessment is repeated at the middle and end of the program or as required.

Funding. Services are funded by the Department of Social Development and the Department of Public Safety.

Structure. Offenders are referred to the *Alternatives Program* by probation and attend on a mandatory basis. The program also accepts referrals from community agencies or men who self-refer and attend voluntarily. Information is shared with the referral source with the consent of the client.

Treatment. *Alternatives* is a 15-week program based largely on the principles of Cognitive-Behavioural Therapy. Topics covered include anger and aggression management, brain

functioning and habit formation, managing stress, self-talk, power and control, healthy relationships, communication skills, effects of domestic violence on children, parenting basics, emotion management, irrational beliefs, resolving conflicts and past experiences.

Individual treatment is also available for offenders who are not appropriate for group counselling.

Parenting Impact of child witnessing. Information regarding the impact on children and basic parenting skills are incorporated into the program content.

Accountability to Victims. Group facilitators contact victims as part of service.

Evaluation. Moncton's domestic violence court was evaluated in 2011 and became a permanent feature of the NB justice response to domestic violence. The evaluation looked at data for offenders accessing the Court between 2007 and 2010. The evaluation was unable to answer the question - 'is the Court working' but was able to provide useful descriptive data regarding who was referred to the Court. The evaluation also described the recidivism rate for offenders in the first year post-intervention at 33%, and in the second year, at 30%. In year 3, the recidivism rate dropped to 11%. Of those men that reoffended, 69% offended more than once.
http: www2.gnb.ca/content/dam/gnb/Departments/eco-bce/WI-DQF/pdf/en/2011-01VictimsOffenders.pdf

NORTHWEST TERRITORIES

Context

Legislation: *Protection Against Family Violence Act*, 2003 came into force in 2005.

Territorial Action Plan: *NWT Family Violence Action Plan.*
http:/ www.hss.gov.nt.ca/publications/reports/nwt-family-violence-action-plan-phase-ii-2007-2012-enhancing-and-expanding

The Coalition Against Family Violence (CAFV) is a territorial interagency group that brings together individuals, non-government and government departments and agencies to share information and undertake projects.

In 2003 the CAFV submitted A Framework for Action: A Call to Action to the Government of the Northwest Territories (GNWT). Since that time, the GNWT has worked collaboratively with the Coalition on the implementation of two Action Plans on Family Violence: The GNWT Response to the NWT Action Plan on Family Violence: A Framework for Action (2003-2007) and The Family Violence Action Plan Phase II (2007 2012). These action plans had a direct impact on family violence in the NWT.

During the first Action Plan the following goals were accomplished:

- The Implementation Steering Committee was created, with membership from 5 GNWT Departments including Health and Social Services; Education, Culture and Employment; Justice; the Executive; the Housing Corporation; and 2 CAFV NGO representatives. The purpose of this committee was to ensure that the vision of the Action Plan was carried out.
- The *Protection Against Family Violence Act (PAFVA)* was enacted, which included the implementation of a 24 hour crisis line that allows victims to access services under the Act. A public education strategy was implemented to increase public awareness of the Act.
- Preliminary work was completed for the Yellowknife Interagency Family Violence Protocol. Based on this work, a toolkit for family violence protocol development was compiled to encourage other communities to establish similar protocols.
- Staff positions dedicated to addressing family violence were created at the GNWT Departments of the Executive and Justice.
- Best practices research on programs designed for person who choose to abuse their intimate partners was completed, as well as recommendations for next steps in developing such programming in the NWT.

With Family Violence Action Plan Phase II funding, the GNWT focused on stabilizing NWT shelters, enhancing community services and providing programming for high-risk men who use violence. In addition, a competency based curriculum and accompanying facilitator's guide was developed for shelter workers.

Victim services are available in-person in eight communities in the NWT with telephone outreach contact available to victims in other communities. Services include court accompaniment and preparation, assistance with Victim Impact Statements, information about the criminal justice system, emotional support, referrals and after-hours crisis support.

The RCMP use ODARA to assess risk in all IPV occurrences. Victim services and shelter workers are also trained on ODARA.

Domestic Violence Treatment Options Court

The Domestic Violence Treatment Option Court (DVTO) is a voluntary program designed for low to medium risk offenders. When an accused is charged with an assault that is domestic in nature, and released on a peace officer undertaking, they are directed to report to Probation Services. Their conditions of release and information regarding the DVTO are discussed. At first appearance, the Crown determines eligibility. If the accused is found eligible and wishes to participate in the DVTO, they are referred to Probation Services to undergo a suitability assessment.

If the accused is deemed suitable, a guilty plea must be entered and the individual must participate in and complete an eight week Planning Action Responsibly Toward Non-Violent

Empowered Relationships (P.A.R.T.N.E.R.) group program. The groups are mixed gender (both male and female offenders) and are run approximately three times per year in Yellowknife, with between five to nine participants per group. In 2015, the P.A.R.T.N.E.R. program was expanded to the Hay River Region, with programs run in October 2015 and March 2016. Offenders are required to report back to DVTO Court at the midpoint of the program to update the Court on current progress. If a participant is found to not be complying with program requirements, or chooses at any time to withdraw from the program, they are sent back to the Territorial Court.

One unique feature of the DVTO Court is the probation officer's authority to vary a no-contact condition without having to return to court. Candidates who successfully complete the program have the benefit of the Court taking this into consideration at sentencing.

DVTO sits in Yellowknife, Behchokǫ̀, and Hay River, with services available to residents of nearby communities who are able to travel. In Hay River, services are also provided to clients resident in K'atl'odeeche (Hay River Reserve) and Enterprise. The Court and supporting services are located in Yellowknife and Hay River.

Risk Assessment. SARA is used by Probation Services as part of the suitability assessment for offenders who are being considered for the DVTO.

The group sessions cover four components: 1) Understanding the dynamics of both Intimate Partner Violence and Non-Violent Empowered Relationships. Recognizing that the offender is responsible for the choice they make in their relationships; 2) Understanding the impact of the offender's choice to use violent and nonviolent behaviours; 3) Understanding the beliefs and contributing factors that lead to choosing violence or choosing non-violence; and 4) Committing to non-violence and learning the skills and tools to help the offender make positive, non-violent choices.

Parenting Effects on child witnesses. Information about the impact of domestic violence on children is incorporated into the program.

'A New Day' Pilot Project

'A New Day' Healing Pilot Project targets adult men in the medium to high risk range who use violence in their intimate family relationships. The goals of the pilot are to reduce violent behavior and re-offending rates among violent men. This pilot is delivered by the Tree of Peace Friendship Centre in Yellowknife.

Funding. Funding for 'A New Day' is provided by the Department of Justice Community Justice and Policing Division on a pilot basis. The current pilot is scheduled to run until December 31, 2016, after which the program will be evaluated.

Structure. The program serves probation-mandated clients as well as clients who are self-referred or referred from Health and Social Services. 'A New Day' reports back to the referral source through protocols that allow for information sharing.

Treatment. The program is contracted as a 20-week narrative therapy group and includes 4 individual sessions as part of the intake process. The 'A New Day' pilot will be evaluated in 2016.

Offenders are encouraged to take responsibility for their violence, use positive behaviour, and reflect on what they want in relationships. There is a lot of flexibility within the model based on individual needs. The group covers the following topics: admit abusiveness, admit behaviour was wrong, acknowledge abuse was a choice, recognize effects on partner and children, identify pattern of controlling behaviour, make amends, accept consequences and be accountable.

Parenting Effects on child witnesses. Information regarding the impact on children of exposure to IPV is incorporated into the group.

Accountability to Victims. There is partner contact and safety planning throughout the offender's involvement with the programs.

Integrated Case Management Pilot Project

The Government of the Northwest Territories' Integrated Case Management (ICM) Pilot Project is led by the Department of Justice in partnership with the departments of Education, Culture and Employment, Health and Social Services, as well as the Yellowknife Health and Social Services Authority and the NWT Housing Corporation. This project is for existing GNWT clients with two or more complex needs who reside in Yellowknife, Dettah, N'dilo and who require supports that do not duplicate existing services. The goal of the ICM pilot is to develop and establish a more coordinated, streamlined approach to service delivery for clients with complex needs in the GNWT by providing the following:

1. Client access through systems navigation
2. Identifying barriers and gaps in policy and service delivery through enhanced collaboration and communication
3. Service delivery through Integrated Service Planning

'Pathfinders' work with the clients to access client centered services and individualized service plans and in conjunction the ICM Working Group with representatives of all parties listed. ICM services are not specific to domestic violence or offenders. The ICM pilot is scheduled to end on March 31, 2017.

NOVA SCOTIA

Context

Legislation: *Domestic Violence Intervention Act*, 2001

Domestic Violence Court: Nova Scotia is currently piloting a Domestic Violence Court based in Sydney (including the Cape Breton Regional Municipality). Other regions do not have a specialized court or prosecution process.

Provincial action plan: *The Domestic Violence Action Plan: All persons in Nova Scotia should live free from domestic violence and abuse (2010).*
http: novascotia.ca/just/publications/docs/Domestic_Violence_Action_Plan_EN.pdf

Nova Scotia's provincial action plan defines IPV as "harmful behaviour that happens in our homes, in our families and in our intimate relationships". IPV is described as being deliberate and purposeful violence occurring in the context of an intimate relationship where one exercises power over the other. The plan acknowledges that men are most often perpetrators of IPV and that children and young people "may experience harm by being exposed to violence in adult relationships".

The key principles of the action plan include safety of women and children as a priority in government policies and programs. Increasing case coordination and access to programs and services for victims and strengthening case processing, coordination, and management to hold those who commit abuse accountable and to support their rehabilitation. The Plan promotes the piloting of the Caring Dads program to "increase the parental capacity of fathers".

Risk Assessment. Police throughout Nova Scotia uses ODARA to assess risk. Probation services uses SARA to assess risk in IPV cases.

The High Risk Case Coordination Protocol Framework allows the Department of Justice and Community Services to share critical information in cases that are deemed high-risk (score above 7 on ODARA). Critical information includes re-offence; release; breach; no-contact orders; victim begins dating; victim moves; application for an emergency protection order is made; court dates approaching; change in custody/access or family court proceedings are initiated. Signatories to the protocol are police, victim services; child welfare, corrections, transition house and men's intervention programs.

Risk assessment is done by probation in partnership with the police to determine which stream is most appropriate for the offender using the ODARA and SARA.

Domestic Violence Court. Nova Scotia's DV court differs from those of many other jurisdictions in that offenders at a range of risk levels are eligible for the DV stream so long as they plead guilty to the offence and would likely receive a community based sentence. Offenders who opt out of the DV court or are ineligible enter the regular prosecutorial system.

There are 3 court streams for offenders in the DV court catchment jurisdiction. The lowest risk individuals participate in the Level 1 program, offered by the Second Chance Society. This group program runs for five weeks and has continuous intake. It uses five modules of the Respectful Relationship program developed in British Columbia. Higher risk offenders attend the 10-week Respectful Relationship program, also delivered by Second Chance Society. The highest risk offenders complete the Respectful Relationship program with the Second Chance Society then

go on to the Relationship Violence Program offered through Family Services of Eastern Nova Scotia.

The court monitors offenders' progress and participation. All offenders, even those still in the midst of treatment, must reappear in the court within three months. They may also be called to appear in court if the service provider reports that they have failed to attend programming. At sentencing, the judge receives the agreed statement of facts and the outcome of the treatment before passing sentence.

Intervention Services Associated with the DV Court

Funding. Intervention services associated with the domestic violence court are funded by the Department of Justice and are located in Sydney. Referrals to the programs are also accepted from child welfare and community counselling agencies. Self-referrals are also accepted. Information regarding evolving risk is shared according to the High Risk Protocol.

CornerStone Cape Breton Association
Sydney, NS

Second Chance is designed for low risk offenders. It is a psychoeducational program that is 5 weeks in duration. The group covers the ABCD thinking, what is a respectful relationship, definition of abuse, thinking errors, understanding anger, time out and cool down, intergenerational cycle, impact on children, communication and empathy. These materials have been based on the *Respectful Relationships* program. The 5th session is an individual meeting to evaluate progress and set goals.

Respectful Relationships is a 10-week program (See BC for a description of *Respectful Relationships*).

CornerStone also offers a program called Continued Support and Intervention Circle for Men (CSI-Circle for Men). This is an open therapist-facilitated peer support group that meets weekly.

Family Services of Eastern Nova Scotia
Sydney, NS
Other offices in Port Hawkesbury, New Glasgow, Antigonish, Glace Bay and Inverness
http: www.fsens.ns.ca/

Relationship Violence is a 17-week program, which is based, in a cognitive behaviour therapeutic model (See BC for description of the *Relationship Violence* Program).

Parenting Impact on child witnesses. Some information regarding the impact on children exposed to IPV is incorporated into the *Respectful Relationships* and *Relationship Violence* treatment groups. Family Services of Eastern Nova Scotia also offers a group intervention programs to support cooperative parenting through separation and divorce and an education and skills-building group for parents of young children.

Accountability to Victims. All services in Nova Scotia include some form of victim contact. Agencies generally conduct phone outreach to victims for safety planning and referral. The justice-linked DV court response relies on letters to victims.

Evaluation. There is an ongoing evaluation of the domestic violence court (Diane Crocker, Saint Mary's University).

Services in regions outside the DV Court jurisdiction

Funding. Services outside the DV court jurisdiction are funded by the Department of Community Services. The exception is the Mi'Kmaq Family Healing Centre. Programs may also fundraise, charge client fees and/or have grants through various agencies, including the United Way, for specific programs.

New Start Society
Dartmouth, NS
http: www.newstartcounselling.ca/

Risk assessment. The program provides services to offenders of varying levels of risk. No formal risk assessment is done through the program, however therapists monitor risk of self-harm, ongoing violence, dangerous thoughts and behaviours.

Structure. Participants attend on a voluntary basis. Referrals are received from Probation and child welfare. Self-referrals are also accepted. *New Start* shares information with the referral agency around attendance and client progress only with the consent of the participant.

Treatment. *New Start* is a 16-week closed, therapeutic group based on Narrative Therapy (Tod Augusta Scott). The group has 10 – 12 participants. Individual counselling is also available and is offered with no cap on the number of sessions a participant can access.

Parenting/Impact on child witnesses. Information regarding the impact on children of exposure to IPV is incorporated into the treatment group.

Accountability to Victims. Counselling is available for partners (face-to-face or telephone). The therapist that works with the victim is not the same therapist that works with the perpetrator.

Integration. *New Start* is a member of the Metro Agency on Family Violence and attends monthly meetings to address systemic issues. New Start may also be involved with clients being monitored by the High Risk Protocol of Nova Scotia.

Bridges Institute
Truro, NS
http: www.bridgesinstitute.org/

Risk Assessment. Bridges does not conduct any independent risk assessment. The program accepts men of all levels of risk as assessed by the referral source.

Structure. Referrals are received from community partners, child welfare, and probation. Self-referrals are also accepted. Offenders referred by probation are court mandated to participate. Information is shared with the referring agency with the participant's consent.

Treatment. The Bridges Institute offers individual, couple, family, and group counselling to male offenders. Treatment is based on a restorative justice approach and mostly uses a narrative and feminist approach to help offenders take responsibility for their choices and be accountable for repairing the harms they have created. Men attending Bridges may be referred to a group counselling program to address their abuse. Group treatment begins with three preparatory individual sessions followed by 20 weeks of feminist-informed narrative group therapy. The group is presented in a 4 stage process: 1) Preparing to take responsibility; 2) Formalize relapse prevention plan – study past incidents of abuse; 3) Studying the effects of abuse; and 4) Demonstrate respect – healing/repairing the effects of abuse. Alternatively, men might be referred to individual, couples or family counselling.

Parenting Impact on child witnesses. Information regarding the impact on children exposed to IPV is incorporated into the treatment group.

Accountability to Victims. Female victims are offered individual services and regular contact with counsellor.

Integration. Bridges is the coordinating member of the inter-agency family violence team in their area and supports regular meetings to address systemic issues. Bridges may also be involved with clients being monitored by the High Risk Protocol of Nova Scotia.

New Leaf
Pictou County Opportunity for Men Association
http: www.newleafpictoucounty.ca/

Risk Assessment. New Leaf does not conduct any independent risk assessment. The program accepts men of all levels of risk as assessed by the referral source. In addition, New Leaf is part of the Integrated Case Management Pilot Project (ICMP), an initiative between justice, social services, housing and health. Case managers referred to as 'Pathfinders' work with clients with multiple, complex needs to assist with systems navigation and obtaining needed services. While not specifically an IPV initiative, many of the clients reviewed by the ICMP are DV offenders.

Structure. The *New Leaf* program is an open group with the minimum number of sessions required for mandated clients as determined by the referring agency.

Treatment. The program utilizes an adult experiential model of education treatment modality, using counsellors instead of therapists who are trained in a dialogue for peaceful change. Because the group is open, there is no specific order in which the information presented. Topics covered include cycle of violence, healthy relationships, impact of violence, and types of abuse.

Parenting Impact on child witnesses: A parenting program, *Parenting with a Purpose*, was a group specifically for fathers who were violent. The group has been discontinued due to lack of funding.

Accountability to Victims. Victim contact is done by a female staff person for the purpose of assessing risk and explaining the services available at the women's shelter (Tearmann House). The women's shelter sets up an information meeting with the woman if she wishes and staff from *New Leaf* attend where possible.

Integration. Pictou County Opportunity for Men Association works within a coordinated community response, which includes case conferencing and monthly High Risk Assessment meetings. The agency is also a member of the Interagency Committee on Domestic Violence.

New Directions
Autumn House/Cumberland County Transition House Association
Amherst http://thans.ca/get-help/find-a-shelter/autumn-house/

Risk Assessment. *New Directions* is part of the Cumberland County Interagency of Family Violence (all key stakeholders) and High Risk Committee. The Committees meet quarterly and share information regarding risk, which is faxed to committee members on an ongoing basis. New Directions uses a tool that they developed to assess suitability for the group.

Structure. Participants are referred by probation and child welfare (mandatory) or can self-refer (voluntary). Information is shared monthly with the referring agency about the participant's attendance and general progress.

Treatment. New Directions is a 25-week program based in a psychoeducational framework. Two weeks of the program are dedicated to parenting.

Parenting Impact on child witnesses. The agency has recently received training on *Caring Dads* and plans to offer it in collaboration with a partner agency.

Accountability to Victims. As part of service, clients consent to partner contact. Victims are met by program staff to share information about the program, gather information about the client and safety plan. The Danger Assessment is used for assessing risk. Victim contact happens throughout the program.

The Journey of Two Wolves (Tapusijik Paqtismk)
Mi'kmaq Family Healing Centre
Truro, NS
http: www.mmnn.ca/about-mmnn/

Risk Assessment. The program does not assess risk. Assessment is done by the referring agency that has case management oversight. The shares assessments of participants' progress only with participants' consent.

Funding. *The Journey of Two Wolves* program is funded by Mi'kmaw Family and Children's Services of Nova Scotia, which in turn, is funded by the Department of Aboriginal Affairs and Northern Development Canada.

Structure. The program accepts both mandatory and voluntary participants. Mandatory offender referrals come from probation and the child protection services. Information is shared with the referral agency through consent of the offender. Participants are provided with a certificate of completion at the end of the program.

Treatment. The program is 12 weeks long and utilizes Narrative Therapy and CBT treatment modalities. Topics covered include time-outs and cool downs, family violence, values and beliefs, impact on children, power and control, emotional awareness, grief and loss, gender socialization cultural socialization, communication, anger management and stress management.

Unlike most intervention programs across Canada, the Mi'kmaq program makes a point of using facilitators who have experienced IPV. Male leaders in their offender groups have been IPV perpetrators and female leaders have been victims of IPV.

Accountability to Victims. Victims are contacted by the women's support counsellors from the Mi'kmaq Family Healing Centre to offer support and counselling.

Parenting Impact on child witnesses. The Mi'kmaq Family Healing Centre does not offer a specific IPV parenting program. Information regarding the impact of children exposed to IPV is included in the treatment program.

NUNAVUT

Context

IPV Legislation: *Family Abuse Intervention Act*, 2008

Domestic Violence Court: There is no domestic violence court in Nunavut; however, the territories' alternate justice framework provides a somewhat similar justice-linked intervention option. A domestic violence treatment option is available in Rankin Inlet. In this area, lower risk offender may enter a guilty plea and attend the Rankin Inlet program. If the offender successfully completes the Rankin Inlet Spousal Abuse program the charge is disposed of by means of a conditional discharge which includes a period of probation.

IPV Action Plan: No current plan.

The *Family Abuse Intervention Act* was Nunavut Legislature's attempt to implement legislation that allowed an alternative to formal legal proceedings to address situations of domestic violence. One aspect of this Act particularly relevant to IPV services is Community Intervention Orders. These orders require the abuser and survivor to attend traditional Inuit counselling with a specified traditional counsellor. To obtain a Community Intervention Order, a one-page form must be filled out and faxed to the offices of the Justices of the Peace. The office immediately

sets up a time for an *ex parte* hearing, to be held over the phone. If the Justice of the Peace is satisfied, the order is granted immediately. Within five days, the order is reviewed by a judge of the Nunavut Court of Justice.

Although Nunavut's *Family Abuse Intervention Act* includes many innovative attempts to address IPV, there have been numerous criticisms of the strategy and, even more importantly, of its implementation. Anti-colonial and anti-essentialist feminist theories have both been applied to understanding these critiques (Durrant 2014). As part of the implementation, the Nunavut government added supports to the legal system to better address the needs of victims of IPV. The legislation specified that family members, lawyers, RCMP officers and "prescribed persons" are permitted to apply for orders with the consent of the applicants. In addition, the government created the position of Community Justice Outreach Worker (CJOW) in every hamlet to facilitate victims' use of the Bill and help to facilitate access to these orders.

Risk Assessment. Police services in Nunavut use the Domestic Violence Investigation Checklist (DVIC). While not a formal risk assessment tool, the DVIC assists police in ensuring that police investigations are comprehensive.

Traditional Inuit Counselling

A Community Intervention Order (CIO) may include the provision that the applicant (victim) and respondent (perpetrator) attend counselling with a traditional Inuit counsellor. Unfortunately, the "specified traditional Inuit counsellor" referred to in the act is undefined and is not a position that formally exists. There is concern that Inuit elders, who presumably are to undertake this counselling, do not have the training or support needed to counsel domestic violence victims or perpetrators. Moreover, there has apparently been some reluctance of elders to become involved in "family issues". It is perhaps in part, for these reasons, that there have been very few Community Intervention Orders made since this Act came into force.

Rankin Inlet Spousal Abuse Program
Pulaarvik Kablu Friendship Centre
Rankin Inlet, Nunavut
http: www.pulaarvik.ca

Structure. The Rankin Inlet Spousal Assault Program (RISAP) started in 2007. It is still Nunavut's only dedicated domestic violence counselling program. This program is available pre-sentencing for offenders who have been charged with a domestic assault and have entered a guilty plea and also to offenders mandated as part of a probation order.

Treatment. The program is a mixture of traditional knowledge and more conventional counselling. The agency provides 6 one-hour sessions of individual counselling and 29, 2-hour group sessions (held twice weekly). Topics include warning signs, relationship rules, circle of violence, cycle of abuse, power and control wheel, timeout wallet card, equality wheel, decision making and dominance, and self-talk. Elders are often invited to the group counselling sessions to talk about family life, resolving disputes without violence, and to instill pride in traditional practices. Offenders accessing the program pre-sentencing return to court following program completion. The Rankin program provides a parallel program for victims of abuse and in some

cases family members. They also provide couples the option of working together to resolve issues.

Accountability to Victims. Services in Nunavut are built with the assumption that both members of a couple are likely to need support. The system also recognizes that women and men will most often continue living together, in part as a result of lack of available housing alternatives. As a result, women's shelters are less likely to be used as a way for victims to transition out of the relationship; rather, they allow victims a place of respite.

Victims of spousal abuse are also provided with counselling and support through the Rankin program. The agency engages in work to build awareness of family violence issues in the community.

Evaluation. The *Family Abuse Intervention Act* was evaluated by the Genesis Group and was submitted to the Nunavut legislature in 2010. From journalistic reporting, it seems that the report was quite critical; however, an online link to this report could not be found for a more thorough review.

ONTARIO

Context

IPV Legislation: N/A

Domestic Violence Court: Domestic Violence Courts and Court processes are available throughout the province.

Provincial Action Plan: Domestic Violence Action Plan Progress Report, 2012
http: www.women.gov.on.ca/owd/docs/dvap_update_2012.pdf

The Ontario Domestic Violence Action Plan covers a broad area of services and Ministries that intersect with IPV and outlines the commitment to oversight through a Ministerial Steering Committee. The Ontario plan is based on a number of overarching principles:

- a right to safety, stating that women have a right to live safely,
- equality, the document recognizes that violence against women is based on fundamental inequality between men and women,
- public leadership, recognizes the government's role in providing leadership in ending domestic violence,
- shared responsibilities, commits to working with a broad cross section of society to create partnerships,
- personal accountability, focuses on the abuser and the application of effective interventions and prevention
- diversity and equity of access, is a recognition of the vast diversity of needs in the province and a commitment to address the uniqueness of communities
- holistic response, acknowledges a broad array of intersecting issues related to domestic violence including employment, housing and child care

- balanced approach, addresses the needs to focus on both the abuser and the victims' needs

The plan calls for continuous evaluation and improvement of programs for abusive partners and victim supports.

Each of Ontario's 54 court jurisdictions offers a Domestic Violence Court Program. The components of this program include: (a) Partner Assault Response (PAR) program(s), (b) Crown Attorney's with additional legal training related to domestic violence, (c) specialized evidence gathering protocols for police, (d) case management policies and procedures for Probation and Parole staff, (e) designated Victim Witness Assistance Program staff to assist and support victims throughout the court process and provide information, support and referrals , and (f) a Domestic Violence Court Advisory Committee comprised of justice sector and community representatives to support the ongoing effective operation of the domestic violence court program .

Risk Assessment. Police services across Ontario utilize a standardized risk assessment checklist for DV related occurrences. The Domestic Violence Supplementary Report (http: www.fact.on.ca/Info/dom/police00a.pdf) is currently being phased out in favour of an updated tool that closely aligns with the SARA (DVRM). Police services also utilize the ODARA.

Probation officers use the Level of Service Risk Inventory (LSI) for all offenders. Although there are information sharing agreements to ensure that risk assessment information is shared with PAR programs, the implementation of these protocols are inconsistent across the province. PAR programs do not complete additional formal risk assessment.

Most communities in Ontario have a court-based domestic violence committee that monitors high-risk offenders. Membership on these committees generally include police, Crown, probation, court based victim services and in some jurisdictions, PAR programs. Community-based case conferencing committees for high-risk families also exist in some jurisdictions and often utilize the B-SAFER or SARA to assist in case planning. Membership on these committees generally include all agencies that provide IPV services, police and child protection services. In some jurisdictions, victims participate in community-based high-risk case conferences.

Domestic Violence Court. The Crown Attorney considers offenders for early intervention if an offender has no convictions for IPV-related offences, has not caused significant injuries or harm, has not used weapons, and chooses to plead guilty. Offenders who enter the early intervention program are generally remanded on conditions to attend and complete a PAR program. In some jurisdictions, early intervention offenders are sentenced immediately and attendance at PAR is mandated as a condition of a probation order. If successful, they are granted a conditional discharge, absolute discharge or peace bond. If the offender does not complete or re-offends during the program, the original charge is reinstated and new charges may be laid.

Offenders who do not wish to participate or are not eligible for the early intervention stream are prosecuted through the coordinated prosecution stream. The coordinated prosecution stream

utilizes specialized evidence collection and investigation procedures by police in order to maximize the amount of supporting evidence that is presented to the court (for example 911 tapes, video-taping of victims statements, photographs of injuries, medical reports and witness statements).

The courts also provide access to justice-linked intervention services through peace-bonds. Peace-bonds are generally used when there is a low probability of conviction. In some jurisdictions in Ontario, the accused enters into a peace bond with conditions to attend a PAR program.

While attending the PAR program, information regarding the participant's progress is shared with the referral source on consent of the program participant. Protocols are in place to ensure that certain mandatory information is shared between Crown Attorneys, Victim/Witness Assistance Program staff, Probation staff and PAR programs. High-Risk Committees exist in all court jurisdictions in Ontario and PAR program membership on the High Risk Offender Committee is generally on a case-by-case invitation only.

Funding. Partner Assault Response (PAR) programs are offered as part of the Domestic Violence Court process and are funded through the Ministry of the Attorney General, Victims and Vulnerable Persons Division. In Ontario there are 63 Partner Assault Response Programs (PAR) attached to provincial court jurisdictions. Designated Crown attorneys are jointly responsible with Victim Witness Assistance Program staff for implementing the domestic violence court program. Organizations delivering PAR programs are not funded to provide the service to voluntary clients or clients under other social mandates

Structure. Offenders are referred to PAR programs as a condition of: (a) a peace bond (section 810 of the *Criminal Code*), (b) a Revised Recognizance of Bail and agreement to attend and complete a PAR program (known as Early Intervention), or (c) a sentence order following a guilty plea or finding of guilt following a trial (known as Coordinated Prosecution).

Treatment. Regardless of the referral stream, offenders enter the same 12-week PAR program. These programs are offered in both closed and open formats depending on the agency. Groups include a minimum of 15 participants. In larger centres, groups of 20 to 25 men are not uncommon.

The curriculum for PAR is pre-set with 9 mandatory topics. The topics are: 1) Domestic Violence – Defining Abuse; 2) How Beliefs and Attitudes Affect Behaviour; 3) Effects of Abuse on Children, Partners and Self; 4) Understanding Triggers / Warning Signs; 5) The Impact of Substance Abuse; 6) Healthy Relationships; 7) Respectful Communications 8) Dealing with Conflict; 9) Responsibility and Accountability .

PAR is a group education/counselling program that provides offenders with an opportunity to examine their beliefs and attitudes and learn non-abusive ways of resolving conflict.

Parenting Impact on child witnesses. *Caring Dads* is available in some court jurisdictions (London, Chatham/Kent, St. Thomas, Sarnia/Lambton, Clinton/Huron, Stratford/Perth,

Woodstock, Kitchener, Waterloo, Guelph, Orangeville, Niagara, Burlington, Toronto, Kingston, Cornwall, Ottawa, Pembroke, Thunder Bay, Aitkokan/Rainy River, Kenora/Dryden). Probation officers supervising DV offenders and child protection workers frequently refer offenders to Caring Dads.

Caring Dads is a group intervention program for fathers who have abused or neglected their children, exposed them to abuse of their mothers, or are at high-risk for these behaviours. The Caring Dads program differs from other parenting programs in its attention to the co-occurrence of domestic violence and child maltreatment and its strong integration with child protection services. The Caring Dads program is offered to groups of approximately 12 fathers over 15 2-hour group sessions and 2 individual sessions. www.caringdads.org

Accountability to Victims. Partner Contact is a mandatory component of the PAR program. Funding is provided to offer victims and/or current partners with safety planning and support, referrals to community resources and information about the offender's progress throughout the duration of the program.

Evaluation. A number of evaluations of Ontario's DV response have been conducted including the following:

Cassell, J., Green, V., and MacGregor, N. (2015). Intimate Partner Violence and the Scales of Justice: Monitoring the Specialized Domestic Violence Court Program in Toronto, Ontario. Retrieved from: http://www.womenatthecentre.com/wp-content/uploads/Still-Unbalanced.pdf

Johnson, H., and Fraser, J. (2011). Specialized domestic violence courts: do they make women safer? Community Report: Phase I. Retrieved from http: www.oaith.ca/assets/files/Publications/Criminal%20Law/DVC-Do-theyMake-Women-Safer.pdf

PAR programs have also been evaluated, including an evaluation of attitudinal change of PAR program participants across 10 agencies, an evaluation of the PAR system, and a study of recidivism.

Quann, N. (2006). *Offender Profile and Recidivism among Domestic Violence Offenders in Ontario.* Department of Justice Canada. Retrieved from http://www.justice.gc.ca/eng rp-pr csj-sjc crime rr06_fv3-rr06_vf3/toc-tdm.html

Scott, K. (2006). Final Report - Attitudinal change in participants of partner assault response (PAR) programs: Phase II. Retrieved from http: www.oaith.ca/assets/files/Publications/ReviewPARSprograms.pdf

Scott, K., King, C., McGinn, H., and Hosseini, N. (2013). The (Dubious?) Benefits of second chances in batterer intervention programs. *Journal of Interpersonal Violence*, 1657-1671. http: jiv.sagepub.com/content/28/8/1657

Integration. Varies within jurisdictions.

Innovation. The *High Risk Safety Project* was aimed at addressing the needs of accused at moderate to high risk of reoffending immediately following a DV charge. This program offered referrals to offenders at the time of release from bail to individual counselling focused on assessment and reduction of dynamic risk for reoffending. Evaluations showed substantial reductions in reoffending in one and two-year follow-up for these high-risk offenders. Results are available in the following publication:

Scott, K., Heslop, L., Kelly, T., and Wiggins, K. (2015). Intervening to prevent repeat offending among moderate- to high risk domestic violence offenders: a second-responder program for men. *International Journal of Offender Therapy and Comparative Criminology, 59*(3), 273-294. http: ijo.sagepub.com/content/59/3/273

Kizhaay Anishnaabe Niin (I am a Kind Man) is an initiative created to provide an opportunity for communities to engage Aboriginal men and youth in understanding violence against Aboriginal women and support them in joining together to end the violence.

The *Integrated Domestic Violence Court* provides a single judge to hear both the criminal and the family law cases (excluding divorce, family property and child protection cases) that relate to one family where the underlying issue is domestic violence. The goals of this court are a more integrated and holistic approach to families experiencing domestic violence, increased consistency between family and criminal court orders and quicker resolutions of the judicial proceedings.
http: www.ontariocourts.ca/ocj/integrated-domestic-violence-court/

PRINCE EDWARD ISLAND

Context

Legislation: *Victims of Family Violence Act (1996)*

Domestic Violence Court: N/A

Provincial Action Plan: Strategies for Addressing Family Violence in Prince Edward Island (2015) http: www.gov.pe.ca/photos/original/PAC_Strategy16E.pdf

The Family Violence Prevention Strategy (FVPS) defines family violence as "any violence by one family member against another". This definition includes IPV, child abuse, a child's abuse of a parent, sibling violence and violence against older adults.

The Strategy's guiding principles include:

- Any form of violence in relationships is not acceptable
- All people and families are valued
- Everyone is entitled to a safe and secure environment
- Everyone, including victims, survivors, witnesses and offenders, is entitled to accessible and appropriate high-quality service and information which is consistent and respectful

- Preventing violence is a shared responsibility

The Strategy identified key goals in awareness, education, and public engagement; coordination and training; interventions and service delivery; policies, protocol, and legislation; and research and evaluation. The strategy also includes promotion of healthy relationships and engagement of men and boys. Services for victims are entrenched in all aspects of the Strategy. Provision for services to offenders are designed to reduce the risk of reoffending and are reflected in the service delivery recommendations.

The Premier's Action Committee of Family Violence Prevention (1995) was appointed to coordinate and implement the original FVPS recommendations. A multi-sectoral committee has continued to be active with representation from police, criminal justice, government, service providers, and community organizations.

Risk Assessment. Municipal police services and the RCMP in PEI use the Domestic Violence Investigation Checklist. While not a formal risk assessment tool, the DVIC assists police in ensuring that police investigations are comprehensive and that risk factors are considered.

Probation services conduct risk assessment using the Level of Service Inventory – Revised, and the Decision-Making Protocol for Domestic Violence (D-MAP DV). This information is shared with the Turning Point intervention program and is used as part of intake assessment.

Turning Point, is an intimate partner violence intervention/ counselling program within the Department of Justice and Public Safety. Individual assessments are conducted several weeks prior to group intervention. Information is collected on history of violence, violence in past relationships, controlling and other abusive behaviours, criminal history, communication style, presence of children, access to weapons, addictions, mental health history, family background, trauma, employment, housing education, literacy and personal interests. In addition, the agency reviews Emergency Protection Orders, details from police reports, Crown briefs, Probation Orders, victim impact statement and previously completed risk assessments. On the basis of the intake and risk assessment, the offender may be screened into a group program or referred to more appropriate resources. Individual counselling within the IPV program is also an option.

Turning Point
Murchison House
http: www.gov.pe.ca/infopei/index.php3?number=11150

Funding. Services are funded by the provincial Department of Justice and Public Safety and are delivered in Charlottetown, Summerside, and Montague.

Structure. Referrals to Turning Point programs are primarily received from probation. Referrals from child protection, family services, addictions, mental health treatment agencies as well as self-referrals are also accepted.

When a referral is received for court mandated clients, probation will share information such as charge status, relationship status, contact conditions, criminal history, other agency involvement,

details regarding the substantive offence, including victim impact statements and any other relevant information related to risk.

Treatment. The *Turning Point* IPV program is 14 to 16 three hour weekly sessions with an average of 6 to 10 participants in each group. The treatment modality utilized is psychoeducational and CBT. Topics include: what is abuse, power imbalances, patterns of partner violence, managing intense emotions, violence and substance use, socialization, communication, problem solving, self-care, and managing stress.

Parenting Impact on child witnesses. Information regarding the impact of violence on children is incorporated into the treatment group.

Accountability to Victims. Victims are contacted as part of the client's assessment and the agency uses factors from various risk assessment tools to assess risk. Service involves regular check-ins with the referral source to share information that may be relevant to victim safety.

Evaluation. A process and outcome evaluation is currently being conducted with a final report expected early 2017. Previously, a program evaluation was completed in 1994 by Dr. Thomas Gaber.

QUÉBEC

Background

Domestic violence legislation: No legislation

Domestic Violence Court: N/A

Provincial Action Plan: 2012-2017 Government Action Plan on Domestic Violence (Action Plan) http: www.scf.gouv.qc.ca/fileadmin/publications/Violence/Plan_d_action_2012-2017_version_anglaise.pdf.

This third Action Plan is based on the *Policy on Intervention in Conjugal Violence: Preventing, Detecting, Ending Conjugal Violence* (Intervention Policy) adopted by the Government of Québec in 1995 (http: www.scf.gouv.qc.ca/fileadmin/publications/Violence/Prevenir_depister_contrer_Politique_VC.pdf). Highlights of the Intervention Policy are available in English at http: www.scf.gouv.qc.ca/fileadmin/publications/Violence/Policy_on_intervention_in_conjugal_violence_Preventing_Detecting_Ending_Highlights.pdf.

The Action Plan includes 135 commitments in 4 strategic directions (1) prevention of violence and promotion of non-violence; (2) early detection and identification; (3) psychosocial intervention and (4) police, judicial and correctional intervention. The guiding principles of government action on domestic violence are the following:

- Society must reject and denounce any form of violence.
- Society must promote respect for people and their differences.

- The elimination of conjugal violence depends primarily on gender equality. IPV is criminal.
- IPV is a means of dominating another person and asserting power over that person.
- The safety and protection of abused women and children are priorities for intervention.
- Any intervention with victims must be based on respect for their independence and on their ability to regain control over their lives.
- Any intervention must take into consideration, and aim to mitigate, the effects of IPV violence on children.
- Abusers are responsible for their violent behaviour; intervention must be aimed at making them recognize and assume responsibility for their violence.

Intervention with aggressors aims to encourage them to take responsibility for their actions. Some of the proposed measures divert offenders to specialized services that are tailored to the conditions of their release which may include mandatory attendance; these services also seek to strengthen intersectoral cooperation, both locally and regionally.

The Action Plan also sets out an approach specifically targeted to the culture of First Nations and Inuit Peoples, for example by adapting intervention tools for IPV and by promoting consistency and making interventions complementary in all sectors. An Interdepartmental Coordinating Committee on conjugal, domestic, and sexual violence was formed to coordinate and monitor the implementation of the Plan.

Risk assessment. Québec police services are required to use a checklist for police investigations into domestic violence when dealing with any incident related to a domestic violence situation.

Community organizations that provide IPV services do not use any specific tool to measure or evaluate risk. The information is only shared in cases of acute risk, and the consent of the offender is not required.

The Carrefour sécurité en violence conjugale (http://csvc.ca/a-propos/) is a working group whose mission is to train the various stakeholders involved in domestic violence to use risk assessment tools, to provide them support, and to enhance cooperation among them.

Throughout the province, there are 33 organizations offering programs for perpetrators of IPV (http: www.acoeurdhomme.com/besoin-daide). In addition to group intervention programs, many of them offer men other services, such as violence prevention for teens, therapeutic and support services to men with mental health problems (for example depression or trauma) and individual and group therapies that address issues such as bereavement, loss, separation or dismissal. In Québec City, there is also a group providing services to men who have been victims of domestic violence.

Funding. The programs are funded primarily by la Santé et des Services sociaux du Québec (the Department of Health and Social Services of Québec). Some organizations supplement their provincial funding through other means, for example, from private sources and customer fees. Information is only shared in cases where risk changes or there is evidence of potential danger.

The programs offered by agencies for IPV include the following components:

Telephone Intervention: first communicating with the men by phone to establish a relationship of trust and to assess risk and whether there is a need for referral to other agencies. Intervention by telephone also allows facilitators to communicate with victims to explain the program, to assess whether they are safe, and to offer resources.

Home and preparedness group sessions: before an offender joins a group, a facilitator meets him at least twice to provide support and assistance, to see if he is ready to join a group, to assess his needs, motivation, and the type of violence he used, and also to refer him to other agencies if appropriate. Participants receive an 'awareness notebook' which is used as a tool to measure the impact of violence in their lives.

Prior therapy to group therapy: men who need more preparation before joining a group meet in private to try to resolve some problems, set goals, and help to break down their resistance. Two to eight sessions of this nature may take place, after which the men join a group.

Men can attend *group intervention programs* at any stage of the process (prior to sentencing, pursuant to a condition of probation, on the recommendation of another organization or voluntarily); such programs are intended for offenders who are motivated to change their behaviour and who have no addiction issues or serious mental illness. The groups are "semi-open" because they accept new members if there is room. The program consists of 15 to 25 sessions (usually 20) of 2.5 hours each with between 4 and 8 participants. The groups are usually led by a man and a woman. The objective of group intervention is to help participants identify their patterns of violence, to choose non-violence, and to adopt alternative strategies to resolve conflicts. During the first meeting, participants must present themselves to the group. In subsequent meetings, they share their experiences and consider strategies to prevent recurrence through discussions, simulations, activities and exchange of ideas. At the twentieth meeting, participants are asked to do a self-assessment of their progress. It is possible to extend the participation of members by negotiating additional objectives and setting a deadline for achieving them. The program content is not unified across the province. From one group to another, the method of treatment varies: some stakeholders apply a humanistic therapeutic approach and are process-oriented, while others use a cognitive-behavioral, motivational or narrative, or combine several of these approaches.

Individual therapy: men who do not meet the requirements to join a group are offered individual counselling sessions. Participants who are not progressing enough in group therapy can also be transferred to individual counselling to continue working on their goals.

Post-program monitoring: Participants can attend monthly meetings as follow-up. The purpose of monitoring is to help people to remember what they have learned. Individual sessions are offered 6, 12 and 18 months after the end of the group program.

Parenting Impact of child witnessing. The issue of the impact of IPV on children who are exposed is normally covered in one or two treatment sessions, although this practice is subject to certain exceptions. Moreover, in Québec City, one organization, *GAPI* offers a group session called "Papa" to men who have used violence in their families and who are enrolled in a family violence treatment program. The themes addressed in group therapy include identifying forms of violence against children, the consequences of this violence, the intergenerational cycle of violence, support for the mother-child relationship, the co-parental relationship with the mother, separation, reunification of the family, and education focused on children's needs. This is a 10 week program based on a cognitive behavioral therapy model.

Accountability to Victims. Most Québec organizations offer support and guidance to victims of violence, usually by phone. Information sessions are also usually offered in conjunction with shelters and other service organizations for women. Some organizations hold information sessions for victims of IPV to review the content and requirements of the program; these sessions are often organized in cooperation with shelters and services for women. In Québec, it is rare that an organization offering services to IPV offenders would also offer support and other services to victims. This responsibility is more likely to fall on shelters and agencies that work with abused women. Information is shared between agencies for men and women only in cases with very high risk.

Evaluation. Studies have been conducted on a number of aspects of Québec intervention programs for IPV. For example, Sonia Gauthier, associate professor, interviewed police officers on their power to release men accused of domestic violence (http: www.utpjournals.press/doi/abs/10.3138/cjccj.45.2.187). She also studied the perceptions of stakeholders about the impact of the abandonment of criminal prosecutions (http: vaw.sagepub.com/content/16/12/1375.short in English only. Genevieve Lessard examined initiatives to promote greater coordination between the justice system and the youth protection system in cases where children have been exposed to family violence.

SASKATCHEWAN

Context

Provincial Legislation: *Victims of Interpersonal Violence Act*

Provincial Action Plan: The government has not issued a domestic violence action plan.

Domestic Violence Courts: There are three domestic violence courts currently operating in the Province of Saskatchewan: the Battlefords Domestic Violence Treatment Options (BDVTO) Court, the Saskatoon Domestic Violence (SDV) Court and the Regina Domestic Violence (RDV) Court. These therapeutic courts emphasize healing and provide an alternative to traditional court processes. Each court has a domestic violence court coordinator along with specialized judges, Crown prosecutors, Legal Aid lawyers, and probation and victim services workers.

Although there are differences among the courts depending on the resources and needs of the community, they all offer a treatment option with sentencing delayed until after the offender attends programming. They also have similar objectives:

- consistent justice response to crimes involving domestic violence;
- improved victim safety and support;
- timeliness of court process;
- offender accountability;
- cultural responsiveness;
- consistent monitoring and evaluation framework; and
- increased awareness of domestic violence across sectors.

Although different court models have been implemented, all three courts provide intensive support for victims and their families. In addition to its treatment option, the SDV Court has a broader approach that deals with matters set for sentencing and also with domestic matters set for trial or preliminary hearing. It is both a sentencing and case management court for domestic violence matters.

Offenders in all courts who are deemed eligible for the treatment option (based on several factors including criminal history and severity of the offence) and who take responsibility for their offence and enter a guilty plea are screened for suitability for domestic violence programming. Suitability factors assessed include risk, addictions, treatment readiness and ability to attend and participate in group programming. Suitability is partially determined using the Saskatchewan Primary Risk Assessment (SPRA) and the Ontario Domestic Abuse Risk Assessment (ODARA) tools.

Each court continues to use the collaborative model identified during the development of the courts to oversee court policy and procedures and provide front-line services. Representatives from the judiciary; Community Corrections and Innovation and Strategic Initiatives in the Ministry of Justice; police services; the health region; police-based victim services programs and community-based organizations that provide related services. Depending on the court, representatives from other sectors may also participate (e.g., Aboriginal Courtworkers, Child Protection).

Offenders who choose to participate in the treatment option programming appear in court for progress reports regularly. The interaction between the judge and the offender is very important to the success of the program. Each court has a process in place for front line workers to come together as case managers to discuss offender progress and make decisions about future direction for the individual. As well, courts have an established process for reviewing requests to change non-contact conditions that are placed on the offender at the time of release from police custody.

Recidivism studies completed in two domestic violence courts have shown that offenders completing treatment programs recidivated less often and had fewer police call-outs than other groups of offenders. In addition, these studies showed that offenders referred to treatment programs through the domestic violence courts completed treatment more often than those referred otherwise (i.e., post-sentence and self-referrals). As well, standardized instruments are

used by treatment programs to measure attitude and behavior changes in participants. They show significant changes in offenders attending through the treatment option.

The Innovation and Strategic Initiatives Branch of the Ministry of Justice produced a video about the Treatment Option available through the three domestic violence courts (DVC). Through interviews with treatment graduates, victims/survivors, the Judiciary, Crown Prosecutors, Legal Aid and private legal counsel, DVC Coordinators, domestic violence and addictions treatment providers, victim services, child protection services, children's program providers, probation services, and RCMP and municipal police, the video documents the journey of accused and who choose the Treatment Option and the perceptions of the victims. The video is available on www.sasklawcourts.

Interministerial Committee: In addition to the DVC/DVTO committees, the Inter-ministerial Committee on Interpersonal Violence and Abuse consisting of Justice - Attorney General, Status of Women, Justice - Corrections and Policing, Health, Government Relations, Education and Social Services coordinates government services and liaises with community coordination. Provincial committees such as Saskatchewan Towards Offering Partnership Solutions to Violence (STOPS to Violence), the Provincial Association of Transition Houses (PATHS) and the Saskatchewan Association of Sexual Assault Centres (SASS) contribute to these efforts.

Community Mobilization Model: In 2011 the Community Mobilization Prince Albert (CMPA) was developed to address high-risk community issues. CMPA is composed of police, corrections, social workers, education, addictions and mental health service providers. While not specifically a domestic violence initiative, the multidisciplinary team meets twice weekly to identify, develop and deploy interventions for acutely elevated risk including risk associated with IPV. Elevated risk is defined as situations where there is significant interest at stake, high probability of harm occurring, severe intensity of potential harm and the situation requires multi-sector solutions. The team has established a filter process that ensures that priorities are maintained and privacy is protected. This process has multiple options for example, agencies can provide de-identified information on the client's risk factors, or basic identifiable information can be shared to identify agencies that should be involved in the planning. CMPA employs one full time worker who coordinates the team's activities. This model has been extended to other locations in Saskatchewan.

Risk Assessment. Police do not use a standardized risk assessment tool in Saskatchewan. As stated above, the Saskatchewan Primary Risk Assessment (SPRA) and Ontario Domestic Abuse Risk Assessment (ODARA) tools are used by Community Corrections to inform case management strategies for each offender when they request participation in the domestic violence treatment option. Domestic violence victim service workers attached to the court use the ODARA and consideration of lethality factors as part of the assessment process when a change to the non-contact condition is requested.

Men's Narrative Program to Foster Respectful Relationships
Family Service Saskatoon
Http: familyservice.sk.ca

Funding. This program is funded through fees paid for by the program participants.

Structure. Participants are referred to the program by the Saskatoon DVC. The program also accepts accused not eligible for the DVC stream who self-refer.

Program. Participants are required to attend 2 pre-group sessions with the program coordinator and co-facilitator. Information regarding the offender's participation, level of engagement and completion of written assignments is shared with the referring agency.

Developed from a Narrative Therapeutic modality (adapted from the Bridges program), the program is 5-six hour sessions that take place on alternating Saturdays over a 9-week period (30 hours of group). Men are guided in an examination of their values, successes and challenges with a view to developing and implementing a relapse prevention plan. Topics included are studying abuse (feelings, thoughts and triggers; effects of the abuse on victims, children and themselves), perspective-taking exercises, listening and communication skills development.

Program staff uses unstructured clinical judgment to monitor offender risk. After the 4th session, victims are contacted to discuss safety planning and links to other community agencies for ongoing assistance where indicated.

Integration. Family Service Saskatoon is involved in the DVC working group and are members of STOPS to Violence.

Domestic Violence Education
Community Corrections - Custody, Supervision, and Rehabilitation Services

Funding. This program is currently unfunded.

Structure. The majority of clients are moderate to high-risk offenders referred through Mental Health and Addiction Services, Family Services and probation. Information is shared with the referral source with the consent of the client.

Program. The program consists of 12, 2-hour sessions. It is an educational program with some basic skills training components. Program staff uses ODARA to assess and monitor client risk. Topics covered in the program include defining abuse, communication skills, time-outs, guilt, shame, stress management, beliefs, self-talk, relapse prevention and substance use.

Impact on child witnesses. No parenting program is available.

Accountability to Victims. The program does not have any partner contact.

Alternatives to Violence
Five Hills Health Region (Moose Jaw, Saskatchewan)
http: www.fhhr.ca/AlternativesViolence.htm

Funding. The *Alternatives to Violence* program is funded by the Department of Corrections and Public Safety and Mental Health and Addictions Services (MHAS). MHAS has recently contracted with Moose Jaw Transition House to provide services for voluntary clients.

Structure. Mandated clients are referred from Probation through the DVT or attend as condition of probation. Voluntary clients can also request service. Formal risk assessment is done by the DVTO Coordinator or the Bail Supervision Officer using ODARA and SARA. Probation co-facilitates the groups at Five Hills Health Region.

Program. The group is closed and runs for 12 weeks, 2 hours per week. The program was created utilizing a variety of therapeutic approaches including CBT, Narrative, psychoeducational and solution-focused therapy. Topics covered include anger management, types of abuse, cycle of violence, ABC's of thinking (CBT) values in relationships, healthy relationships, assertive communication, impact of violence on children healthy parenting, jealousy, development of a feelings language, self-talk/beliefs. Two guest speakers are included in the program, one man who has successfully completed the program, and a woman whose stepfather murdered her mother.

Impact on child witnesses. Parenting and children exposed to violence programs are offered by Moose Jaw Transition House. Information regarding the impact on children exposed to IPV is incorporated into the treatment group.

Accountability to Victims. The offender's probation officer contacts victims. There is no victim contact for voluntary clients.

Integration. There is no Domestic Violence Court in Moose Jaw, however collaboration happens informally amongst community-based service providers, police and corrections.

Alternatives to Violence

- Regional Health Authorities are funded by the Ministry of Health and are responsible for the day to day delivery of mental health and addiction services.
- Alternatives to Violence Treatment is shared between mental health and addictions and probation services in Regina, Saskatoon and North Battleford where Domestic Violence Courts exist.
- Delivery of Alternatives to Violence Programs also exist in other health regions but are not a core mental health service in some health regions and other health regions provide services on an individual basis.

Battleford Mental Health Centre
http: www.ehealth-north.sk.ca/facility.aspx?m 4andfacility=381

Funding. *Alternatives to Violence* program is funded by the Ministry of Health.

Structure. Participants may be referred through the Battleford Domestic Violence Treatment Options (BDVTO) Court. In addition, men who have been convicted of a domestic violence

related offence and sentenced with the condition to attend an IPV program, may be referred through Community Corrections. The program also accepts voluntary participants.

Program. The program utilizes cognitive-behaviour, client-centered and psychoeducational modalities. The group is 16 weeks in duration, with 2-hour sessions once per week. The program consists of 3 segments. For the first 8 weeks the group focus is on anger management. Using a thoughts, feelings, and actions model, participants create an anger management plan that includes what they can do to change. The participants use the abusive event that resulted in them being in the program as a frame of reference for this work, discussing thoughts, feelings and circumstances surrounding the event and alternate outcomes had the circumstances been different. The second segment focuses on healthy relationships. Participants identify components of healthy romantic relationships. The third segment deals with affect regulation. Participants are taught strategies to manage difficult emotions, self-care, and goal setting.

Impact of child witnessing. Parenting and children's programming is offered by Catholic Family Services. Information regarding the impact of witnessing IPV on children is incorporated into the treatment group.

Integration. The program is delivered within the DVTO, collaborative framework. Information is shared by all services involved with the offender every 2 weeks during the DVTO meetings regarding the participant's progress.

Accountability to Victims. The program does not have contact with victims; rather, this contact is the responsibility of Victim Services attached to the DVTO.

Kanaweyimik Family Violence Treatment Program
Battleford, SK
http: www.kanaweyimik.com/program_family_violence.html

Funding. Funding for the Family Violence Treatment Program is provided by Ministry of Justice – Attorney General.

Structure. Kanaweyimik Family Violence Treatment Program serves individuals referred from the Battlefords Domestic Violence Treatment Options (BDVTO) Court, as well as individuals who are self-referred or referred by a community agency.

Program Treatment. Kanaweyimik offers a 25-week program with continuous intake. The model used by the program is holistically based, focused on the mind (psychological self), the body (physical self), the emotions (emotional self), and spirit (spiritual self). A combination of both western therapeutic methods and cultural health practices are used. Men's group sessions are held every Monday and victims' sessions are held every Tuesday.

Impact of child witnessing. Catholic Family Services offers parenting and children exposed to violence programs.

Accountability to Victims. Kanaweyimik Family Violence Treatment Program provides services to all family members, which would include victims of violence on a volunteer basis.

Integration. Kanaweyimik is part of "The Working Group" that takes a case management role with offenders in BDVTO Court. It includes representatives from Victim Services, Community Corrections, Legal Aid, Crown Prosecutors, and Mental Health. The Working Group meets every second Friday to discuss client progress. For offenders referred from the DVTO, a Kanaweyimik counsellor provides progress reports to the court every second Thursday.

Evaluation Annual data reports are compiled for each court. Two courts have participated in a process and outcome evaluation and recidivism studies; one in an implementation evaluation. A research project with the University of Regina is focused on the impact of therapeutic courts on the various systems involved.

Interpersonal Violence and Abuse Programming:

Voluntary services are provided to victims of interpersonal violence and abuse through the Interpersonal Violence and Abuse Program [IVA]. The program provides funding for the delivery of 43 IVA services through 33 non-profit organizations in 17 communities for Saskatchewan residents who are at risk of, victims of and survivors of interpersonal violence and abuse. This includes crisis services for women and their children and non-residential services and support for those affected by sexual violence and assault, domestic violence, family violence, dating violence and assault.

YUKON

Context

IPV Legislation: *Family Violence Prevention Act*, 2005
http: www.canlii.org/en/yk/laws/stat/rsy-2002-c-84/latest/rsy-2002-c-84.html

Domestic Violence Court: Domestic Violence Treatment Option is available.
Yukon Therapeutic Courts (DVTO and CWC) http://www.yukoncourts.ca/

Territorial Action Plan: Victims of Crime Strategy (2009 – 2014)
http://www.justice.gov.yk.ca/pdf/Victims_of_Crime_Strategy.pdf

The Victims of Crime Strategy was designed to formalize and strengthen the government's service infrastructure, explore new initiatives and establish mechanisms to work collaboratively to support victims of crime. The development of this strategy resulted from a commitment made by the Department of Justice as part of the Correctional Redevelopment Strategic Plan. Core collaborators included the Women's Directorate and many organizations that provide services to victims of crime.

The guiding principles of the strategy include:

- Acknowledgement of diverse and complex needs of victims
- A commitment to preserve the dignity of victims and to value their voices and autonomy
- A commitment to collaboration
- Acknowledgement of the long lasting, profound complex and intergenerational impact of residential schools and a commitment to providing culturally sensitive services which are grounded in basic human rights and freedoms.
- Services and programs will be guided by best practices and research.

The Strategy focuses on five themes: strengthening the focus on the needs of victims; focusing on addressing violence against women, which specifically refers to domestic and sexual violence; exploring legislative options; mentorship and capacity building in communities; and integrating response for victims, offenders, families and communities. The possibility of a victim offender reconciliation program, collaborative case planning and integrated supervision for high-risk offenders are discussed.

Collaboration is promoted by the Framework Committee of Domestic Violence and Sexual Assault, a working group comprised of representatives from Justice, First Nations, violence against women agencies, police, and health professionals. This committee was tasked with the development of Victims of Crime Strategy.

The Yukon currently has two therapeutic court processes that are available to offenders involved in the criminal justice system.

Domestic Violence Court. The Yukon uses a Domestic Violence Treatment Option Court (DVTO) model was developed in 2000 to address the ongoing concern of the high collapse rate of domestic violence cases. To enter the DVTO court process the accused must accept responsibility for their violent behaviour and agree to participate in programming. In all domestic violence cases, the RCMP refer cases to the court within two weeks of the offence. After appearing before a DVTO court judge the accused, if interested in the DVTO court process, requests a suitability assessment. If the accused is found suitable he\she enters a guilty plea and enters into the DVTO court process. This process usually happens within the first few court appearances.

If accepted into the DVTO court, offenders check in regularly with their bail supervisor, appear before the DVTO court judge every two weeks and begin programing as recommended by their bail supervisor. An accused may be ineligible if he or she is not motivated to take treatment and programing or not willing to enter a guilty plea.

Community Wellness Court: The Yukon Community Wellness Court (CWC) is a judicially supervised court aimed at providing treatment and support for offenders living with an addiction to alcohol or drugs, mental health problems and or an intellectual disability including but not limited to Fetal Alcohol Spectrum Disorder. The CWC court was developed in 2005 with its first sitting in April 2007.

The CWC court combines intensive offender monitoring with a comprehensive approach to addressing the psycho-social needs of participating offenders in order to reduce recidivism.

Offenders charged with domestic violence who have an underlying issue of addictions, mental health or cognitive issues can be referred to the Community Wellness Court for assessment and programing.

Risk Assessment. The Yukon has worked with the RCMP to develop enhanced police investigation, management and reporting procedures for domestic violence. The expanded protocol includes a summary checklist form Violent Incident Relationship Checklist. Risk indicators are used to help determine whether to detain or release the accused, set release conditions and facilitate early contact with Family and Children's Services in cases involving children.

Funding. Programing is offered by the Department of Justice and administered through Offender Supervision and Services.

Structure. The Probation officer assumes the role of case manager and reports back to the court every 2 weeks on the accused progress. It generally takes 4-12 months to complete all required programming for the Domestic Violence Court. It generally takes 12-24 months to complete all of the required programing for the Community Wellness Court.

In both courts, once programing is completed the offender is brought back to court for sentencing on the substantive offence. Typically the disposition can include a variety of sentences and often can includes a probation sentence to ensure ongoing support and follow up.

Treatment. Programming for men is tailored to address the individual offender's specific criminogenic risk factors. Programming for clients in DVTO includes the 10 session *Respectful Relationships* and the 17-session *Violence in Relationships* program, and is facilitated by Offender Supervision and Services staff. Programming for women includes the *Emotional Management* program and the 12 session *Relationship Skills for Women* program.

Programming for clients in the Community Wellness Court focuses on criminogenic risk factors and also incorporates other services and programing that can assist the client on their wellness journey. Other programming within the department that is offered includes substance abuse management, sex offender programming and violence prevention programming.

Impact on child witnesses. Information regarding the impact on children witnessing IPV is incorporated into the treatment group. In Yukon, Project Lynx provides victim services and a multi-agency coordinated approach to supporting child and youth victims/witnesses in accordance with National Best Practice for Child and Youth Advocacy Centers.

Accountability to Victims. The DVTO court and Community Wellness Court processes includes Victim Services at the project management and case conference levels. Victim Services staff provide voluntary supports and information for victims.

Victims Services and the Crown Witness Coordinator (PPSC) provide the staff in Offender Supervision and Services with victim information that assists with completing risk assessments.

Victim Services may also support the victim by identifying needs and making appropriate referrals in addition to providing them information about the offender's progress through the therapeutic court process.

Evaluation. The Yukon DVTO court was evaluated by the Canadian Research Institute for Law and the Family, University of Calgary. Overall, the evaluation was quite positive, concluding that this model, which combines a comprehensive justice system approach with a treatment program for offenders, provided an excellent model for dealing with spousal assault and abuse.

http: www.crilf.ca/Documents/Domestic%20Violence%20Treatment%20Option°o20-%20Final%20Report%20-%20Oct%202005.pdf

The Yukon Community Wellness Court was also evaluated in 2014 by Dr Joseph Hornick. Overall the evaluation was very positive concluding that the CWC court is meeting the goals of reducing recidivism, enhancing the safety of Yukon communities and utilizing alternative justice approaches to address crime in Yukon.

DISCUSSION

This report reviewed and summarized justice-linked programming across Canada. The specific focus of this review was services in court-based, clinical, and community settings and directed it at the majority population of perpetrators of IPV. Results are informative in terms of both commonalities and considerable differences in system organization and content. A few of the major themes of similarity and difference are discussed.

Intervention Service

One of the most striking findings of this review is the extent of variation in justice-linked intervention response to DV offenders across, as well as within, Canada's provinces and territories. The most commonly available program is some version of a psychoeducational, cognitive-behavioural, or narrative group program that includes 8 to 12 participants and lasts between 16 and 20 weeks (32 to 40 hours). A few jurisdictions are offering a shorter program, 10 to 12 weeks (20 to 24 hour), most often targeted to low risk offenders. There is only one service in Canada that mandates a program that is less than 20 hours in duration, the 5-week *Second Chance* program option in Nova Scotia for low risk offenders. There is also only one province, Ontario, where funding has been specifically set for a minimum group size of 15. In terms of program content, regardless of group size, length or modality, programs are likely to cover some combination of the following concepts: understanding abuse, impact of abuse on victims, emotional regulation skills, and problem-solving. Most programs also include information on the effect of IPV on children.

Canada's programs appear to fall almost equally into three main treatment modalities: psychoeducation, cognitive-behaviour, and narrative. There is no obvious relationship between length of program and modality, or between level of risk and modality, though there is a trend for psychoeducational programs to be more often targeted at lower-risk offenders. Interestingly, intervention modality varies as much within provinces as it does between provinces. Although this may be interpreted to suggest that the capacity of individual offenders to choose or be

matched to a modality of their choosing; in reality it reflects approaches by different agencies working in different parts of the region. Seldom would it be possible for offenders to choose to receive intervention in alternate modalities.

Although group intervention remains the predominant modality for justice-linked intervention, a substantial minority of programs (including most programs using a narrative modality) are offering individual sessions in addition to group work. Most often, individual sessions are offered prior to group service and serve a motivational and/or assessment function. The exception to this are agencies devoted to serving Indigenous populations which often take a holistic, family-based approach and tend to offer a range of services to address domestic violence including group work, individual sessions, family and couples therapy.

Finally, it is important to note that most jurisdictions have some level of differential prosecution through DV courts in response to offenders at varying levels of risk on standardized risk assessments. Intervention programs, on the other hand, are mostly non-differentiated. In most regions, offenders assessed as being at low, moderate or high risk for reoffending, and offenders accessing service as a result of a justice mandate, community referral, or self-referral attend the same program and receive the same services. In regions with DV courts, differentiated services are more likely. In such regions, the most common model is for there to be two services: a) a shorter specialized program which is fairly well integrated with the courts and is restricted to low risk offenders and, b) a longer, often community-based intervention that serves moderate and high risk offenders referred by probation along with community, child protection and self-referred clients. Only a minority of jurisdictions and agencies across Canada offer intervention groups exclusive to moderate and high risk offenders (see British Columbia for an example of this model of service).

Accountability to Victims

A foundational component of justice-linked response to IPV is a dual focus on promoting perpetrator accountability and providing services and supports for victims and offenders of family violence. Provincial and Territorial Action Plans in Canada, where they exist, all include a commitment to respond to perpetrators and support victims. Consistent with this commitment, most justice-linked intervention responses across Canada include some provision for victim support. However, the inclusion of victim contact, referral, or support as part of justice-linked intervention programs for perpetrators is not universal. In some provinces/territories, victim contact is a required component of all justice-linked IPV intervention services. For example, in the NWT, victim support is built in as a core aspect of all services. In other provinces, agencies providing intervention to court-mandated offenders rely on probation, police, victim services or a court manager for victim support. Only a minority of programs across the country provide therapeutic support (i.e., services beyond information sharing, safety planning, and referral) to victims of men's abuse. Agencies most likely to provide therapeutic support to both male perpetrators and female victims are those dedicated to serving Indigenous peoples.

Parenting

Research has clearly established that children are negatively impacted by exposure to IPV and there is a high overlap between men's perpetration of violence against children's mothers and their direct physical and emotional abuse of children. Recognizing this overlap, a number of IPV action plans are beginning to include statements about the importance of parenting interventions to prevent potential intergenerational cycles of violence. Whether justice-linked interventions for IPV should or should not include intervention to address challenges in parenting is open for debate. However, what is clear from the current review is that, with very few exceptions, programs addressing IPV are offering limited parenting intervention. In many of the psychoeducational and CBT-based intervention programs, one or two group sessions are devoted to raising men's awareness of the effects of exposure to IPV on children and to discussing the importance of fathers as role models for their children. These two sessions likely provide valuable motivation to men attending groups and also may help to increase awareness about the impact of IPV; however, they are insufficient for addressing post-separation issues or for changing men's problematic parenting (e.g., hostile attribution, low levels of emotional responsiveness). The exceptions are a few agencies across Canada offer the *Caring Dads* program and a few others that offer the option of family-based intervention for IPV offenders.

System Integration

Justice-linked intervention programs are, by definition, embedded in a broader system response to IPV. A number of aspects of this broader system were examined including issues of referral, funding, victim accountability, risk assessment and the level of integration between justice and community services. As might be expected given differences in history and development of services across Canada, there are many differences in the overall systems of justice-linked intervention. These differences can often be linked with domestic violence action plan priorities. For example, when victim support is emphasized in action plans, more services are available for victims. When parenting intersections are highlighted, more linked services are available to address offender's joint involvement in the criminal justice and child protection systems.

Another factor stands out in consideration of results of this review is the extent to which integration is a concern for service providers. There appears to be widespread recognition of the value of sharing information and collaborating across justice and community-based intervention services. However, actual level of integration varies considerably. In jurisdictions with strong justice-intervention program links, men are referred into specific intervention programs, with clear (though not always successful) lines of communication between the intervention programs and justice services. At the other end of the spectrum are systems in which offenders and or probation officers have to "shop around" for the best service available. A deeper consideration of the advantages, disadvantages and implications of these differences in connection is warranted.

Evaluation

There is a reasonably large body of research on justice-linked response to IPV in Canada. The most extensive research appears to be on DV courts and court processes, though studies also explore specific intervention programs. Much of the research done on programs and services in Canada is published as "gray literature" though sometimes results are also published in peer reviewed journals. A comprehensive review of existing Canadian evaluations may be warranted

as a foundation for continued development of empirically-based best practice standards for justice-linked intervention for IPV perpetrators.

Limitations

This project was ambitious in its attempt to access, review, and describe policy and practice in justice-linked responses to IPV across Canada. Although we were able to discuss our evolving findings with key informants from every province and territory, it is quite possible that aspects of policy or practice were missed. Moreover, as we noted earlier, we did not attempt a systematic review of services for minority (i.e., women, LGBTQ, cultural, linguistic) offenders, and there are likely a number of innovative services to these populations that were not reviewed.

CONCLUSIONS

The current project offered the opportunity to examine justice-linked intervention services for IPV across Canada. It is informative in terms of both the commonalities and differences in IPV response across the country and will provide an excellent springboard for broader discussions of Canada's IPV policy and programming.

Resources

Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems, Department of Justice
http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/vol2/p12.html#sec12

The Case for a National Action Plan on Violence Against Women, Canadian Network of Women's Shelters and Transition Houses, October 2013.
http://ywcacanada.ca/data/research_docs/00000307.pdf

Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems, Volume II, Annexes to the Report of the Federal-Provincial-Territorial Ad Hoc Working Group on Family Violence
https://www.solgps.alberta.ca/safe_communities/community_awareness/family_violence/Publications/MakingLinksFamilyViolenceCases-Annex.pdf

APPENDIX A: SERVICES BY PROVINCE

ALBERTA
All the service providers under the PFVTP umbrella adhere to the PFVTP Provincial Standards in their treatment programs. Alberta Health Services is either the lead or a partner in their local community in providing addiction and/or mental health services. For more information, here is the link to our page on the AHS external web:
http://www.albertahealthservices.ca/amh/Page2768.aspx

Alberta Health Services, Provincial Family Violence Treatment Program specific agencies funded to provide treatment to perpetrators

Calgary
- Calgary Counselling Service
- YWCA
- Community Links
- Immigrant Services Centre

Edmonton
- Aboriginal Counselling Services
- Family and Children's Services
- Changing Ways
- Alberta Alcohol and Drug Commission

Peace River
- North Peace Society for the Prevention of Domestic Violence

Grande Prairie
- John Howard Society: The Renaissance Program; a 16 week group treatment program
- John Howard Society: The Nexus Program; a 14 week group program for women

Fort McMurray
- Fort McMurray Family Crisis Society – Opportunities for Change; 20 week program which includes 3 mandatory follow up sessions
- Changing Ways for female offenders

Hinton
- Hinton Friendship Centre (satellite programs in Jasper, Edson and Grande Cache)

Wetaskiwin
- Society of Prevention of Family Violence for Wetaskiwin and District; Seeds of Change Program 16-week group

Drumheller
- Community Crisis Centre

Red Deer
- Jim Freeman Psychotherapist Ltd.

Rocky Mountain House
- Mountain Rose Women's Shelter: 16-week program

Airdrie
- Community Links: 14-week group program

Morley Reserve
- The Sony Healing Family Violence Treatment Program

Brooks
- Lifetalk Counselling Service

Lethbridge
- Lethbridge Family Services; 30 hour group treatment, additional individual counselling before and after group where required. Intimate Partner or Couple's Counselling is also provided for couples who choose to remain together
- YWCA Harbour House Outreach Program
- Associates Counselling

Medicine Hat
- Medicine Hat Family Services "The Courage to Change" group
- John Howard Society "Men's Work" aftercare support

BRITISH COLUMBIA

Delta
- Stroh Health Care Consulting Corporation – Family Violence Program

Smithers
- Northern Society for Domestic Peace – Domestic Peace Program

Prince George
- North John Howard Society of British Columbia – PG STOP: Prince George Stop Taking it Out on your Partner

Campbell River
- Laichwiltach Family Life Society – Men's Only Healing

MANITOBA

Manitoba Métis Federation
www.mmf.mb.ca/departments_portfolios_and_affiliates_details.php?id=3
MMF Domestic Violence Program offered in Dauphin, The Pas, Interlake and Thompson

Winnipeg
- Salvation Army Correctional and Justice Services – Choose 2 Change
- Klinic Community Health Centre – Evolve Men's Program
- Family Dynamics, Counselling and Community Services – Family Dynamics (Counselling Services)
- Community and Youth Corrections Making A Connection (MAC)

- Community and Youth Corrections Introduction to Healthy Relationships (IHR)
- Ma Mawi Wi Chi Itata Centre Spirit of Peace

Brandon
- Building Bridges Program

Thompson
- Men are Part of the Solution

NEW BRUNSWICK

Shédiac
- Beauséjour Family Crisis Resource Centre – Narrative Therapy Domestic Violence: High Intensity Intervention

Moncton
- John Howard Society Southeastern New Brunswick – Domestic Violence Prevention for Men Low Intensity (DVPM-LI)
- Empathic Life Solutions – Options Men's Program

Campbellton
- Restigouche Family Services – Alternatives

NEWFOUNDLAND

St. Johns
- John Howard Society

NOVA SCOTIA

Bridgewater
- Family Service of Western Nova Scotia – Alternatives

Sydney
- CornerStone Cape Breton Family Services
- Second Chance
- Respectful Relationships
- Relationship Violence Program

Amherst
- Autumn House/Cumberland County Transition House – New Directions

Dartmouth
- New Start Society - New Start (Counselling Services)

Truro
- Bridges Institute – Bridges

New Glasgow
- Pictou County Opportunity for Men Association – New Leaf

Whycocomagh
- Mi'kmaq Family Healing Centre Transition House - The Journey of Two Wolves – Tapusijik Paqtismk

ONTARIO

Barrie
- New Path Youth and Family Counselling Services of Simcoe County

Bracebridge and Parry Sound
- Muskoka-Parry Sound Community Mental Health Service

Cobourg
- Northumberland Community Counselling Centre

Durham
- Family Services Durham

Lindsay
- John Howard Society of Kawartha Lakes and Haliburton

Newmarket
- John Howard Society of York

Peterborough
- John Howard Society of Peterborough

Brantford
- Nova Vita Women's Shelter Incorporated

Cambridge
- Family Counselling Centre of Cambridge and North Dumfries

Cayuga and Simcoe
- Haldimand-Norfolk R.E.A.C.H (Cayuga)

Guelph
- Family Counselling and Support Services for Guelph-Wellington

Hamilton
- Catholic Family Services of Hamilton

Kitchener
- John Howard Society of Waterloo-Wellington

Burlington, Milton, Oakville
- Access Counselling and Family Services

Orangeville
- Catholic Family Services Peel Dufferin

Peel
- Family Services of Peel

St. Catharines
- Children's Aid Society of the Niagara Region

Dryden
- Kenora-Rainy River Districts Child and Family Services

Elliot Lake
- Counselling Centre for East Algoma

Fort Frances
- Riverside Health Care Facilities Inc.

Haileybury, North Bay
- Community Counselling Centre of Nipissing

Kapuskasing
- Services de counselling de Hearst-Kapuskasing- Smooth Rock Falls Counselling Services

Kenora
- Other Ways Now Program

Manitoulin (Gore Bay)
- Ngwaagan Gamig Recovery Centre Inc.

Sault Ste. Marie
- Algoma Family Services,

Sudbury

- Sudbury Counselling Centre/ Centre de counselling de Sudbury

Thunder Bay
- Catholic Family Development Centre of Thunder Bay

Timmins
- Catholic Family Development Centre of Thunder Bay

Belleville, Picton
- Conflict Resolution Counselling Services of Quinte

Brockville, Perth
- Leeds and Grenville Mental Health

Cornwall
- Counselling and Support Services of Stormont, Dundas and Glengarry

Kingston, Napanee
- K3C Community Counselling Centres

L'Orignal
- VALORIS pour enfants et adultes de Prescott-Russell / VALORIS for Children and Adults of Prescott-Russell

Ottawa
- Catholic Family Service Ottawa / Service familial catholique Ottawa

Pembroke
- Living Without Violence Inc.

Toronto
- Abrigo Centre
- Chinese Family Services of Ontario
- Costi Immigrant Services
- Counterpoint Counselling and Educational Co-Operative Inc.,
- Elizabeth Fry Toronto
- Family Service Toronto
- John Howard Society of Toronto
- Native Child and Family Services of Toronto
- Polycultural Immigrant and Community Services
- Rexdale Women's Centre

London, Chatham, St. Thomas, Strathroy
- Changing Ways London, Inc.

Goderich
- Huron-Perth Centre for Children and Youth

Owen Sound, Walkerton
- Bruce Grey Child and Family Services

Sarnia
- Social Service Bureau of Sarnia-Lambton o/a Family Counselling Centre

Stratford
- Family Services Perth-Huron

Windsor
- Hiatus House (until March 2016)

Woodstock
- Children's Aid Society of Oxford County

NORTHWEST TERRITORIES

Yellowknife
- A New Day, Tree of Peace Friendship Centre

NUNAVUT

Rankin Inlet
- Rankin Inlet Spousal Abuse Program

PRINCE EDWARD ISLAND

Charlottetown
- Community and Correctional Services – Turning Point

QUÉBEC

For a complete list of programs, please go to: http://www.acoeurdhomme.com/besoin-daide

SASKATCHEWAN

Saskatoon
- Family Service Saskatoon Men's Narrative Program to Foster Respectful Relationships
- Custody, Supervision, and Rehabilitation Services Domestic Violence Education

- Saskatoon Health Region - Alternatives

Moose Jaw
- Five Hills Health Region – Alternatives to Violence

North Battleford
- Battleford Mental Health Services – Alternatives to Violence

YUKON

Probation services
- Respectful Relationships and Violence in Relationships

APPENDIX B: KEY INFORMANTS

Sean Armstrong
Edmonton Police Service
Staff Sergeant
Domestic Offender Crimes Section

Kimberley Greenwood
Chief of Police
Barrie Police Service

Trevor Daroux
Deputy Chief of Police
Bureau of Community Policing
Calgary Police Service

Tracy Porteous
Executive Director
Ending Violence Association
British Columbia

Roderick McKendrick
Interpersonal Violence Specialist
Victims Services
Ministry of Justice
Government of Saskatchewan

Leanne Fitch
Chief of Police

Fredericton Police Force

Steve Versteeg
Manager of Projects and Programs
Community Justice and Policing
Northwest Territories

Laura Boileau
Program Coordinator
Tree of Peace Friendship Center
Northwest Territories

Dawn Anderson
Director of Integrated Case Management
Department of Justice
Northwest Territories

Jo-Anne Hargrove
Community and Correctional Services
Justice and Public Safety
Prince Edward Island

Joseph Hornick
Executive Director
Canadian Research Institute for Law and the Family
University of Calgary

Maggie McKillop
Executive Director
Homefront
Calgary, Alberta

Sheralyn Dobos
Program Director
Family Violence Action Society
Camrose, Alberta

Chris Krueger
Community Justice Worker
Manitoba Metis Federation
Thompson, Manitoba

Shannon Allard-Chartrand
Director of Justice Services
Manitoba Metis Federation

Marvin McNaught
Executive Director
Learning Resource Program
NFLD and LBD

Bonnie Beatty
John Howard Society
Edmonton, Alberta

Caroline Foster
Men's Support Counsellor
Autumn House
Amherst, Nova Scotia

Terry Cove
Executive Director
Autumn House
Amherst, Nova Scotia

Kim Sadler
Executive Director
Second Chance
Nova Scotia

Art Fisher
Executive Director
Family Service of Western Nova Scotia
Sydney, Nova Scotia

Wendy Keen
Executive Director
New Start Society
Dartmouth, Nova Scotia

Tod Augusta-Scott
Executive Director
Bridges Institute
Truro, Nova Scotia

Cathy Grant
Coordinator Facilitator
Pictou County Opportunity for Men Association
New Glasgow, Nova Scotia

Angela "Doreen" Googoo
Intervention Worker

Mi'kmaq Family Healing Centre Transition House
Whycocomagh, Nova Scotia

Kristal LeBlanc
Executive Director
Beauséjour Family Crisis Resource Centre
Shédiac, New Brunswick

Krista Leger
Associate Director
John Howard Society – Southeastern New Brunswick
Moncton, New Brunswick

Kimberly Wilson
Clinical and Forensic Psychologist
Executive Director
Restigouche Family Services
Campbellton, New Brunswick

Janice Tilley
Facilitator
Empathic Life Solutions
Moncton, New Brunswick

Hennes Doltze
Social Worker Diversions Programs
Salvation Army Correctional and Justice Services
Winnipeg, Manitoba

Mary-Jo Bolton
Clinical Director
Klinic Community Health Centre
Winnipeg, Manitoba

Mel MacPhee-Sigurdson
Facilitator
Klinic Community Health Centre
Winnipeg, Manitoba

Kim Barber
Intake Coordinator
Family Dynamics, Counselling and Community Services
Winnipeg, Manitoba

Michelle Joubert
Director of Community Programming

Community and Youth Corrections
Winnipeg, Manitoba

Ben Dubois
Facilitator
Ma Mawi Wi Chi Itata Centre
Winnipeg, Manitoba

Hélène Davis
Counsellor
Family Service Saskatoon
Saskatoon, Saskatchewan

Cara McDavid
Senior Social Worker
Five Hills Health Region
Moose Jaw, Saskatchewan

Kristal LeBLanc
Executive Director
Beausejour Family Crisis Resource Centre
Shediac, New Brunswick

Denise Carey
Partner Abuse Intervention Probation Officer
Community Corrections
Custody, Supervision, and Rehabilitation Services
Ministry of Justice, Government of Saskatchewan

Wayne Schlapkohl
Psychologist
Battlefords Mental Health Services
North Battleford, Saskatchewan

Deb Fehr
Psychologist
Saskatoon Health Region
Saskatoon, Saskatchewan

Audrey Best
Executive Assistant
Stroh Health Care Consulting Corporation
Delta, British Columbia

Susanne Urban
Northern Society for Domestic Peace
Smithers, British Columbia

Wayne Hughes
Executive Director
North John Howard Society of British Columbia
Prince George, British Columbia

Leah White
Manager, Offender Supervision and Services
Community and Correctional Services
Department of Justice, Government of Yukon

The Costs of Charter Litigation

Submitted by: Alan Young

Submitted to: Susan MacDonald, Research and Statistics Division

Date: May 3, 2016

The Costs of Charter Litigation

Introduction

The enactment of the *Charter of Rights and Freedoms* in 1982 fundamentally altered both the substance and form of constitutional review. In the first decade of Charter litigation, many novel claims were advanced and resolved, yet there still remained a great deal of confusion with respect to the scope of the substantive principles and the procedural mechanisms for raising and applying them. After 35 years, most of the relevant constitutional principles have been solidified and clarified, as have the guidelines on the procedures for mounting a constitutional challenge. However, despite the great achievements of the past three and a half decades, there remains a legitimate concern that most Canadians do not have the financial resources to mount such challenges. Many believe that there still remain serious problems regarding access to justice for ordinary Canadians.

In fact, a brief review of academic scholarship and popular journalism demonstrates that a consensus has emerged that most people cannot afford to mount constitutional challenges in order to vindicate their rights-claims. The conventional wisdom that most challenges are cost prohibitive for Canadians is repeated endlessly like a well-worn mantra. Within academic literature, we find the following statements:

- Individuals with legitimate Charter claims in the non-criminal context must bear the enormous costs of their actions or find counsel who will be prepared to work *pro bono*. ... Thus, the great promise of Charter jurisprudence is dependent upon a litigant clearing the practical hurdle of costs. [1]

- While our system of justice delivers quality results, it often does so at a cost that shuts the courtroom door to all but the well-to-do.[2]

- It is a rare client with a *Canadian Charter of Rights and Freedoms* issue who has deep pockets, and deep pockets are required for almost any Charter challenge. ... While not every Charter case is of transcendent importance, many of those that we have to turn away for want of funding had the potential to advance some very important values in Canadian society and, if successful, would make Canada a

[1] Benjamin L. Berger, "Putting a Price on Dignity: The Problem of Costs in Charter Litigation" (2002) 26 Advocates' Q. at 235.
[2] Robert J. Sharpe, "Access to Charter Justice" (2013) 63 SCLR (2d) at 3.

better place for minorities and those for whom the Charter was enacted in the first place.[3]

- Unfortunately, as litigation is both timely and expensive, only the richest in society can afford to utilize this final resort without a litigation-support program such as the CCP {Court Challenges Program]. Indeed, without the program, Canada's most vulnerable groups will continue to be left out in the cold.[4]

- One of the main impediments to obtaining effective and meaningful Charter remedies is the costs and delay of litigation.[5]

- It will come as no surprise to those familiar with the process of litigation to discover that the cost of mounting a *Charter* challenge is extremely high. ... Costs like these represent a formidable obstacle to disadvantaged and even middle-income Canadians who wish to pursue their *Charter* rights in the courts.[6]

One finds similar sentiments expressed within popular journalism:

- While there may be much to celebrate, the process of using [the Charter] to establish rights is time-consuming and expensive, almost entirely dependent on government subsidies and the benevolence of lawyers to bankroll cases, sometimes costing millions of dollars. ... Like fine champagne, the Charter is in danger of becoming a luxury many never taste. ... It's like the Dom Pérignon that's locked behind the door at the LCBO. It may taste great, but if you can't get at it, what does it matter? ... It doesn't seem right that the government enacts the Charter and commits itself to having individuals protected through our justice system, and yet makes it economically impossible for that to happen.[7]

- In addition, the costs of litigation have sent the price of a Charter challenge soaring out of reach for ordinary litigants and many public-interest groups. ... We are stuck with this Charter that looks wonderful on paper, but it's just that – paper – unless people have the ability to enforce their rights. ... Only those who drive a Cadillac get to use the Charter highway.[8]

In this brief report, I will address the issue of whether Charter challenges are, in fact, beyond the means of ordinary Canadians by looking at the costs incurred both in challenges I have advanced and in other challenges for which there is some information regarding the costs of the challenge. In a nutshell, it is

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[3] Joseph J. Arvay & Alison Latimer, "Cost Strategies for Litigants: The Significance of *R. v. Caron*" (2011) 54 SCLR (2d) at 427, 448-449.
[4] Larissa Kloegman, "A Democratic Defence of the Court Challenges Program" (2007) 16:3 Constitutional Forum at 107.
[5] Kent Roach, "Enforcement of the Charter – Subsections 24(1) and 52(1)" (2013) 62 SCLR (2d) at 486.
[6] Andrew Petter, *The Politics of the Charter: The Illusive Promise of Constitutional Rights* (Toronto: University of Toronto Press, Scholarly Publishing Division, 2010) at 104-105.
[7] Tracey Tyler, "The Charter's challenges", *Toronto Star* (7 April 2007), online: <www.thestar.com>.
[8] Kirk Makin, "Charting a course in the age of judicial review", *The Globe and Mail* (11 April 2007), online: <www.theglobeandmail.com>.

clear that in cases in which there is extensive legislative fact evidence, it is possible for the costs of a challenge to exceed $1,000,000, whereas in cases in which the challenge is advanced and supported largely by legal argument, and not evidence, the costs of the challenge will entirely depend upon legal fees. In many of these cases, the costs will be considerably less and will rarely exceed $50,000.

The Author's Experience in Mounting Constitutional Challenges

Since the early 1990s, I have had carriage of numerous constitutional challenges, most often seeking invalidation of *Criminal Code* offences. I have brought challenges to various offences— including those pertaining to obscenity,[9] drug literature,[10] gaming houses,[11] marijuana possession[12]— and to our sex trade laws.[13] In addition, I have employed the Charter to secure a right to consume marijuana as medicine[14] and to create rules facilitating post-conviction disclosure and preservation of evidence.[15] Further, I have also had many occasions to employ the Charter in the course of ongoing criminal trials seeking remedies for procedural violations such as unreasonable search and seizure or denial of right to counsel. All of these cases were fundamentally different in terms of the time spent preparing and advancing the claim and in terms of the costs incurred in raising the claim.

Ironically, I have been asked to prepare this report on the costs of constitutional litigation despite the fact that I completed most of this work on a *pro bono* basis. It is likely that the high costs of constitutional litigation can be attributed to exorbitant legal fees; however, even when lawyers complete work *pro bono*, or on a highly-discounted, basis, for many cases there will still be serious cost issues relating to disbursements, and, in particular, expert evidence. Nonetheless, in my experience, there are many ways to reduce the costs of disbursements, and I have found that constitutional challenges can be brought in a way which is affordable to many Canadians—as long as legal fees are not excessive.

To advance the constitutional challenges I have brought in the past 30 years, I have relied upon three methods of funding (for disbursements). The challenge to the marijuana possession offence (which ended up in the Supreme Court of Canada) was funded entirely by donations from interested parties. In

[9] *R v Emery*, 8 OR (3d) 60.
[10] *Iorfida v MacIntyre*, 21 OR (3d) 186.
[11] *R v Andriopoulos*, [1994] OJ No 2314.
[12] *R v Clay*, [1997] OJ No 3333 (Gen Div), 49 OR (3d) 577 (OCA), 2003 SCC 75.
[13] *R v Bedford*, 2013 SCC 72.
[14] *Wakeford v Canada*, 166 DLR (4th) 131 (Gen Div), [1999] OJ No 1574 (SCt J), [2000] OJ No 1479 (SCt J), 58 OR (3d) 65 (OCA) [Wakeford].
[15] *Chaudhary v Ontario (Attorney General)*, 2013 ONCA 615; Winmill v Canada (Ministry of Justice), 2015 FC 710.

many constitutional claims, there is an ongoing political debate and there are often activists and supporters who are willing to donate small amounts of money for the "cause". In the marijuana challenge, the applicant/accused was able to raise $25,000, which was used primarily for expert witnesses. Most of these witnesses were willing to come to court and testify on a *pro bono* basis, and the funds were used for transportation and accommodation. Some witnesses were paid a $1000 honorarium, but most were willing to work without pay. In subsequent cases dealing with the right to use marijuana as medicine, modest funding (approximately $20,000) was obtained from American benefactors (George Soros' Drug Policy Foundation and Peter Lewis' Marijuana Policy Project). Although I was never able to find Canadian benefactors to provide disbursement funding, it must be remembered that many challenges involve issues which are currently a matter of political debate and activism. Therefore, there will always be supporters willing to donate funds, and in the digital era it has become easy to target these potential small-scale benefactors. In fact, for the recent Federal Court invalidation of the *Marihuana for Medical Purposes Regulations*,[16] the case was entirely funded by donations from patients and pro-cannabis supporters.

Due to the unpredictable nature of fundraising, I did not rely upon this method of disbursement funding in many cases. For other cases, I did rely upon two other sources of funding: the defunct Court Challenges Program and the Test Case Program at Legal Aid Ontario. Between 1999 and 2002, I received approximately $50,000 for two cases dealing with the right to consume marijuana as medicine.[17] Both cases were brought by an activist, James Wakeford, and both cases involved extensive legislative fact evidence, multiple hearings and appeals. I no longer have complete records of these files, but I do recall that the funding secured from the Court Challenges Program was largely needed to fund the extensive array of expert witnesses. As in most of my cases, I was able to obtain this expert evidence without having to pay fees for service (other than the occasional $1000 honorarium). At the end of the day, we did not incur high costs for transportation and accommodation (as the Crown chose not to bring these witnesses to Toronto for cross-examination) and there were some funds remaining to pay my fees and the fees of co-counsel. (I believe these fees did not exceed $10,000 for both cases.)

Being able to secure expert witnesses on a *pro bono* basis is partly a product of the fact that, as an academic, I am better able than a practising lawyer to persuade other professors to volunteer their time for free. More importantly, by working with a team of students, I am able to minimize the amount of

[16] *Allard v Canada*, 2016 FC 236.
[17] *Wakeford*, *supra* note 14.

work which is required of the expert, as my students will always take responsibility for drafting the expert's affidavit so that the expert need only review the draft. Although the experts will spend a fair amount of time being interviewed by a student, they do not have to devote much time to the completion of the affidavit.

Most recently, I applied for Test Case funding from Legal Aid Ontario (LAO) to bring the *Bedford* challenge to our sex trade laws. I should note that the Court Challenges Program (in 2002) and the Test Case program (in 2006) both denied funding for this challenge in the belief that it was unlikely to succeed; however, I was able to finally persuade the Test Case Program to provide $30,880 in disbursement funding in 2007 (with another $14,389 provided in 2008). Before turning to some of the details of the *Bedford* funding, it should be noted that many provincial legal aid plans do have programs for test case funding based upon criteria similar in nature to the defunct Court Challenges Program. In Ontario, funding can be secured for "public interest" cases as defined by the following criteria:

> A public interest matter is one that demonstrably, based on specific factors established by LAO:
> - advances important public interests, in alignment with LAO's access to justice mandate and strategic goals
> - transcends individual interests
> - addresses a serious issue that fundamentally affects low-income Ontarians or disadvantaged communities whose perspective would be unlikely to come before the courts but for the involvement of LAO
> - is a an effective and efficient use of resources – a practical and realistic means of bringing an issue before the court[18]

Despite the existence of these programs, I cannot speak to their efficacy as I have no information on the scope and nature of funding they provide. With respect to the *Bedford* challenge, it can been seen that the funding was indeed modest: $45,269 was awarded for a case involving over 60 witnesses (most of whom were cross-examined), 27,000 pages of documentary evidence, 7 days to hear the application and 5 days of argument on appeal in the Court of Appeal. (There was a different funding arrangement for the Supreme Court of Canada, as will be discussed.) As with my other cases, there were no counsel fees paid, and all of the experts waived any fees for service. The funding was primarily requested to allow for the transportation and accommodation of witnesses for the purpose of cross-examination on their affidavits; however, the proposed budget was created prior to the Crown responding to our record, and when the Crown tendered affidavits from approximately 30 witnesses, it turned out that our greatest

[18] Legal Aid Ontario, *Support for Test Cases*, online: Legal Aid Ontario <http://www.legalaid.on.ca/en/info/test_cases.asp>.

expense ($11,720) was incurred for the transcription of the cross-examinations of the witnesses I had not anticipated being required to cross-examine. Another costly expense incurred related to the photocopying of an application record of 88 volumes of documentary evidence ($5749 – the total cost of approximately $16,000 for the reproduction of the record was split evenly between the applicants and the federal and provincial government). Appended to this report as Appendix A is a chart of all expenses incurred for the application – the chart shows that approximately $10,000 remained in our budget to use for the appeal to the Ontario Court of Appeal.

If expert witnesses are willing to waive fees (or if the challenge does not require extensive expert evidence), it becomes clear that the belief that Charter claims are cost-prohibitive will relate primarily to the issue of counsel fees. In *Bedford*, I was not willing to conduct the appeal in the Supreme Court of Canada without the assistance of other counsel, and I asked senior counsel Marlys Edwardh to assist me. A new application was then presented to the Test Case Program seeking disbursement funding and funding for the services of Ms. Edwardh.

With respect to funding for counsel, the Legal Aid plan will provide a funding of $109.13 per hour for Tier I counsel, with funding of $136.43 per hour for senior counsel. Clearly, these hourly rates for counsel are not exorbitant; however, for cases of some complexity, the hours of preparation can become unwieldy. In this case, for the appeal to the Supreme Court of Canada, it was estimated that 80 hours of preparation would be required for the leave-to-appeal application, and 490 hours of preparation would be allowed for the actual hearing in the Supreme Court. In addition, the Test Case Program provided $6,500 for disbursements for the leave application and $20,000 for disbursements for the hearing in the Supreme Court. In total, funding for taking the challenge to the Supreme Court of Canada amounted to $14,000 for the leave application and $71,876 for the appeal itself.

It is somewhat incongruous that the initial hearing and appeal cost $45,000, whereas the appeal to the Supreme Court of Canada amounted to $85,876. It must be remembered that by the time a case reaches the Supreme Court of Canada, all the "heavy lifting" has been done in terms of interviewing witnesses, drafting affidavits and attending and conducting cross-examinations. One would expect costs to be reduced as one ascends the levels of the court hierarchy. This reality underscores the significant cost to be incurred if legal fees are charged (even at the discounted legal aid rate).

To get a better sense of the potential costs that can be incurred with complex litigation and counsel fees, I did make some effort before the appeal to the Court of Appeal of Ontario to estimate the costs of

preparing and arguing this case. Upon success in the Superior Court, the application judge unexpectedly awarded costs against the government, and I then made an attempt to estimate my fees in preparing to apply for costs. (Ultimately this application was never brought.) Putting aside disbursements (already paid for by LAO), I estimated that my counsel fees would be $200,520 based upon the following breakdown:

- 528.5 hours of preparation at $300/hr ($158,550)
- 23.5 days of cross-examinations at $1000/day ($23,500)
- 7.5 days of court hearing at $2,500/day ($18,750)

Although the hourly rates charged in this estimate are higher than the rates allowed under the Legal Aid plan, these are still discounted rates for senior counsel. Nonetheless, once counsel fees are introduced the cost of the *Bedford* application rises to $286,401 from $45,000 (Note that this does not include any fees associated with the appeal to the Court of Appeal, as no estimate has been done of the time spent on this appeal). Most significantly, it must also be recognized that most of my litigation work, including the *Bedford* case, is done with extensive participation of law students who either volunteer or who are paid the standard rate of $15/hr for research assistance. I estimated that I spent approximately 500 hours preparing this application and I believe that if I had not had extensive student assistance, my hours of preparation would have been closer to 1500 hours ($450,000 at $300/hr).

Variables and Elusive Cost Estimates

Beyond the potential high costs associated with counsel fees, it appears that the largest variable which affects the predictability of costs will be the necessity of calling legislative fact evidence. *Bedford* was not a complex case in terms of legal argument, but it is one of the constitutional challenges known for the extensive array of legislative fact evidence tendered upon the application. Later on I will return to provide a more complete discussion of this important variable, but for now it is important to also understand that even if legal fees had been charged in *Bedford*, the costs of mounting this challenge may not be representative of the costs to be incurred for challenges of similar factual complexity. For reasons mentioned below, in *Bedford,* there were many ways, not available in other cases, in which costs could be reduced.

I am not aware of any study that quantifies the costs of various challenges brought in the past 30 years and it may be worthwhile to obtain information from the various Legal Aid programs about funding

provided for test cases. However, some sense of the range of cost can be found when one examines cases in which applications have been made for advanced costs. With respect to advanced costs, courts have the jurisdiction to grant costs to a litigant, in rare and exceptional circumstances, prior to the final disposition of case and in any event of cause, where:

1) the party seeking interim costs genuinely cannot afford to pay for litigation,

2) the claim adjudicated is prima facie meritorious,

3) the issues raised are of **public importance** (and have not been resolved in previous cases).[19]

Advanced costs are only awarded in exceptional circumstances, and from 2000 this award has mostly been made in cases dealing with issues of Aboriginal rights[20] and one dealing with the issue of whether traffic tickets need to be issued in French.[21] In the *Okanagan* case, the quantum of advanced costs were not pre-determined and the applicants were allowed periodically to request payment of costs in accordance with a procedure agreed to by the parties; however, it does appear that a maximum award of $814,000 was contemplated.[22] However, in the *Tsilhqot'in* case, we can see that the quantum can be very high as advanced costs exceeding $10,000,000 were incurred.[23] Of course, no two cases are alike and other advanced costs show that some challenges can be completed for considerably less than these two Aboriginal rights cases. In the *Fournier* case, an award of $17,500 was originally made to pay for the mounting of a defence to a charge of fraudulently selling native status cards.[24] In the *Caron* case, an award of $91,000 was made for a language rights challenge to unilingual traffic tickets.[25] In the *Fontaine* case, an award of $70,000 was made to support a class action being brought by an Aboriginal woman against a residential school.[26]

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[19] *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 [*Okanagan*]; *Little Sisters Book and Art Emporium v Canada*, 2007 SCC 2 [*Little Sisters*].
[20] *Ibid*; *Tsilhqot'in Nation v Canada (AG)*, 2004 BCSC 610; *Keewatin v Ontario*, [2006] OJ No 3418; *Hagwilget Indian Band v Canada*, 2008 FC 574; *Fontaine v Canada (Attorney General)*, 2015 ONSC 7007 [*Fontaine*].
[21] *R v Caron*, 2011 SCC 5, 2011 CSC 5 [*Caron*].
[22] *Okanagan, supra* note 19 at para 5.
[23] *Tsilhqot'in Nation v Canada (AG)*, 2006 BCCA 2 at para 18.
[24] *R v Fournier*, [2004] OJ No 1136.
[25] *R v Caron*, 2009 ABCA 34 at para 4.
[26] *Fontaine, supra* note 20 at para 9.

In *Carter v Canada*[27], dealing with the constitutionality of the assisted suicide prohibition is a case very analogous to the *Bedford* case in terms of the Charter arguments made and the scope of legislative fact evidence. This case did not receive an award of advanced costs; however, the application hearing judge decided to award "special costs" to the applicants in light of the public importance of the successful challenge. This award of "special costs" exceeded $1,000,000[28] and it is likely that the *Bedford* challenge would have also incurred costs of this magnitude had it not been for the willingness of counsel and experts to work free of charge.

The issue of costs also introduces another layer of unpredictability for the funding of constitutional challenges. In calculating the costs of litigation, one often assumes that the challenge will be successful; however, one must also account for the contingency of losing and having costs awarded against the applicant. Fortunately, the awarding of costs against applicants who have brought constitutional challenges is not a significant concern as there is a well-established doctrinal approach to costs in which costs are rarely awarded against test case applicants.[29] In fact, I have never had costs awarded against my clients in cases in which the constitutional challenge had been dismissed.

Predicting the costs of a constitutional challenge is also confounded by three other important variables. First, it must be remembered that constitutional challenges are brought within the context of an adversarial process, despite the challenge resembling a public inquiry. In *Bedford*, there was a high level of co-operation between the applicants and the federal and provincial governments, and the government often agreed to pay for some expenses incurred by the applicant (in Appendix A, it can been seen that the federal government agreed to pay for the transportation and accommodation of a witness from Australia – our costliest flight). Nevertheless, in many other cases I have been involved with there was a more adversarial and antagonistic relationship with government, and often the challenges become bogged down in interlocutory motions such as motions to strike the claim, judicial review of undertakings given in cross-examination to produce documents and the raising of numerous preliminary objections to standing, jurisdiction of the court and admissibility of evidence. In some cases, the government is willing to facilitate a speedy hearing on the merits, and in other cases the government will do whatever it can to delay addressing the merits of the claim. Obviously, if the government hotly contests all aspects of the challenge, costs will increase in a significant manner.

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[27] *Carter v Canada (Attorney General)*, 2015 SCC 5

[28] *Ibid* at para 134.

[29] *Joanisse v Barker*, [2003] OTC 733 at para 14; *Canadian Foundation for Children, Youth & the Law v Canada (Attorney General)*, 2004 SCC 4 at para 69; *Vennell v Barnardos*, [2004] 73 OR (3d) 13 at para 51.

The second variable affecting costs relates to the choice of procedure. In all of my challenges I was able to reduce costs by initiating the process by way of application for declaratory relief and not by way of an action. Despite the fact that hearing *viva voce* evidence at a trial of an action is more dramatic, it is far more cumbersome and inefficient as compared to the application process in which affidavits are tendered with cross-examination of the affidavits taking place outside of court before the hearing of argument. Even with effective case management trials are notoriously unpredictable and often require a great deal of last-minute adjustments in scheduling. Having the witnesses attend for cross-examination in front of a special examiner outside of court allows for precise scheduling and reduces the burden on the witness. As can be seen from the chart of expenses in Appendix A, the costs incurred for testing affidavit evidence in the *Bedford* was very manageable and predictable.

The third variable, alluded to above, is the need for calling legislative fact evidence. If experts need to be paid, and counsel wishes to call a wide array of experts, then costs will exponentially increase. Not all cases require an in-depth analysis of legislative fact evidence; however, in recent years it does appear that this practice of calling numerous experts from various disciplines has become the norm and not the exception. As this variable is the one which most dramatically affects the quantum of costs, I wish to now briefly address the issue of how, when and why the practice of introducing an extensive record of legislative fact evidence has evolved in Canadian law.

Legislative Fact Evidence – Some Thoughts on this Critical Variable[30]

The Supreme Court of Canada may not have provided much guidance as to when and how legislative fact evidence should be introduced, but it has provided a clear definition of what legislative fact evidence entails:

> It is necessary to draw a distinction at the outset between two categories of facts in constitutional litigation: "adjudicative facts" and "legislative facts". These terms derive from Davis, Administrative Law Treatise (1958), vol. 2, para. 15.03, p. 353. (See also Morgan, "Proof of Facts in Charter Litigation", in Sharpe, ed., Charter Litigation (1987).) Adjudicative facts are those that concern the immediate parties: in Davis's words, "who did what, where, when, how and with what motive or intent ...." Such facts are specific, and must be proved by admissible evidence. Legislative facts are those that establish the purpose and background of legislation, including its social, economic and cultural

[30] Most of the discussion in this section is taken from an article I completed in 2014: A. Young, "Proving a Violation: Rhetoric, Research and Remedy" (2014) 67 S.C.L.R. (3d) 617.

> context. Such facts are of a more general nature, and are subject to less stringent admissibility requirements....[31]

Recent practice in constitutional adjudication under s. 7 suggests that the litigants believe a meritorious challenge must be accompanied by an extensive sampling of legislative fact evidence. As Da Silva has noted:

> Recent constitutional jurisprudence has seen an increasing role for expert evidence and social science research in the determination of contentious cases. Trial level constitutional arguments in *Bedford v Canada* (concerning the constitutionality of criminal prohibitions against prostitution- related activities), *Canada (Attorney General) v PHS Community Services Society* (concerning constitutional exemptions from criminal drug trafficking offences for a safe injection site), and *Carter v Canada (Attorney General)* (concerning the constitutionality of criminal prohibitions on physician-assisted dying) relied heavily on expert submissions and social science data; in *Insite,* trial level weighing of this information provided a factual basis for the Supreme Court of Canada (SCC)'s ultimate determination. Contemporaneous with these cases was the first use of British Columbia's trial level constitutional reference power: *Reference re: Section 293 of the Criminal Code of Canada,* also known as *The Polygamy Reference.*[32]

This movement towards extensive application records replete with a variety of expert evidence was propelled by a clear admonishment in the earlier Charter-era from the Supreme Court of Canada to the effect that constitutional challenges should not be brought in a factual vacuum. The Supreme Court of Canada clearly expressed a preference for challenges to be accompanied by legislative facts of a contextual nature. The Court stated in 1989:

> Charter decisions should not and must not be made in a factual vacuum. To attempt to do so would trivialize the Charter and inevitably result in ill-considered opinions. The presentation of facts is not, as stated by the respondent, a mere technicality; rather, it is essential to a proper consideration of Charter issues. ... Charter decisions cannot be based upon the unsupported hypotheses of enthusiastic counsel.[33]

The Court may have been expressing a disdain for constitutional arguments which proceed solely on the basis of the rhetoric of "enthusiastic counsel"; however, one has to wonder whether the Court was inviting counsel to convert a court hearing into a commission of inquiry. The recent flurry of s. 7 challenges were not simply accompanied by a modest selection of contextual studies and research, but rather were cases in which dozens of expert and

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[31] *Danson v Ontario (Attorney General),* [1990] 2 SCR 1086, 74 OR 763 at para 27.
[32] Michael Da Silva, "Trial Level References: In Defence of a New Presumption" (2002) 2 WJ Legal Stud. 1 at 1.
[33] *MacKay v Manitoba,* [1989] 2 SCR 357, 61 DLR (4th) 385 at 361-62 [cited to SCR]. See also, *Danson v Ontario (Attorney General),* [1990] 2 SCR 1086.

experiential witnesses testified, and countless studies were tendered without the requirement of calling the authors of the studies as witnesses.[34]

For example, in the recent polygamy reference, Bauman C.J. noted the importance of a full evidentiary record in Charter litigation and stated "I have taken a liberal approach to admissibility in this proceeding, admitting all the evidence tendered."[35] Thus Bauman C.J.'s disposition regarding the constitutionality of s. 293 of the *Criminal Code* rested "on the most comprehensive judicial record on the subject ever produced".[36] Bauman C.J. summarized the evidence as being comprised of over 90 affidavits and expert reports. Approximately 22 of the affiants and experts were examined who represented "a broad range of disciplines including anthropology, psychology, sociology, law, economics, family demography, history and theology."[37] Many lay witnesses also presented evidence of personal experiences within polygamous relationships.[38]

The conversion of constitutional challenges into wide-ranging inquiries of social and political facts and values extends beyond the well-known controversies involving drug injection sites, polygamous relationships, assisted suicide and sex work. For example, in a recent s. 7 and s. 15 challenge to the BC Corrections Branch's decision to cancel the Mother and Baby Program, which allowed inmates to remain with their babies after giving birth while they served their sentences, the Court heard and considered a wealth of contested evidence concerning child-rearing practices and the bond between mother and

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[34] See e.g. ***Bedford v Canada (Attorney General)*, 2010 ONSC 4264 at para 84, 102 OR (3d) 321 [*Bedford* ONSC]** (88 volumes containing over 25,000 pages of evidence were presented to the court, in addition over 60 lay and expert witnesses); ***R v Morgentaler*, [1988] 1 SCR 30, 44 DLR (4th) 385 at paras 26, 89-91, 121, 143-47, 200** (the Court, having been presented with numerous articles, reports, and studies, relied heavily on the 1977 Badgley Report and the 1987 Powell Report, and heard from such witnesses as therapeutic abortion physicians); ***Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at paras 60, 79-82, 3 SCR 134** (the claimants and the government each tendered affidavits from medical practitioners assessing the efficacy of Insite) [*PHS*]; ***Carter v Canada (Attorney General)*, 2012 BCSC 886 at paras 114, 160, 278-79, 287, 299, 262-63, 287 CCC (3d) 1** (the evidentiary record included some 36 binders, 116 affidavits, and 18 witnesses who were cross-examined on their affidavits, including 11 witnesses who were cross-examined in court); ***Little Sisters Book and Art Emporium v Canada (Minister of Justice)* (1996), 18 BCLR (3d) 241, 131 DLR (4th) at paras 1, 110 (available on QL) (BC Sup Ct) [*Little Sisters* BCSC]** (the court heard testimony from many expert or experiential witnesses, including artists, sociologists, psychologists, book distributors, librarians, and police officers); ***Victoria (City) v Adams*, 2008 BCSC 1363 at paras 38, 45, 88 BCLR (4th) 116 [*Adams*]** (the trial judge referred to two reports related to homelessness, the Report of the Gap Analysis Team and The Mayor's Task Force Report); ***Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at paras 40, 42, 56, 62, 70-84, 114, 1 SCR 791 [*Chaoulli*]** (the Court was presented with at least 5 studies regarding wait times in Canada as well as further reports on the status of health care in other Canadian provinces and other countries, in addition to the testimony of at least 7 doctors).

[35] *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588, 28 BCLR (5th) 96 at para 46.

[36] *Ibid* at para 6.

[37] *Ibid* at paras 28-29.

[38] *Ibid* at paras 26-51, 59-62, 104-105.

child. In finding the cancelled policy to be violative of rights, Ross J. summarized evidence from 10 expert witnesses[39] and 7 experiential witnesses[40] in addition to the two applicants. These witnesses included a nurse, a sociologist, a psychologist, a physician, a law professor, a professor of psychiatry, a clinical and forensic psychologist, a clinical social worker, a correctional supervisor and some of the mothers in the program. The director of Research, Planning and Offender Programming at Corrections also provided a report regarding the "characteristics of the population of sentenced women in the province, criminogenic risk factors and factors relating to recidivism."[41]

It may not always be necessary to call legislative fact evidence. Sometimes the proof of a constitutionally adverse effect of law can be a matter of reasoned argument and simple common sense. Scientific and empirical inquiry will usually play a critical role, but, in some circumstances, common sense should come into play if science has yet to provide a conclusive resolution. For example, in *RJR-McDonald*[42], the Court needed to reach a factual finding as to whether advertising increased consumption of a product (in this case, cigarettes). The scientific studies presented to the Court were not resolute or determinative of the issue and the Court relied upon the "powerful common sense observation" that companies would not spend millions on advertising if they did not believe that it would increase consumption of their products.[43] The Court recognized that the exercise of proving the effects of law cannot be seen as a pure scientific inquiry as "predictions respecting the ramifications of legal rules upon the social and economic order are not matters of precise measurement, and are often 'the product of a mix of conjecture, fragmentary knowledge, general experience and knowledge of the needs, aspirations and resources of society, and other components.'"[44]

In addition, legislative fact evidence is often available within government reports, and on a consistent and routine basis, the litigants and the courts have relied upon government reports without supporting witnesses for the purpose of elucidating legislative objectives and to provide evidence of the effects of legislation. Even a cursory review of Supreme Court jurisprudence in the *Charter* era reveals extensive reliance on government reports to establish a wide array of legislative facts.[45] Government reports may

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[39] *Inglis v British Columbia (Minister of Public Safety and Solicitor General)*, 2013 BCSC 2309 at paras 255-322 (available on WL Can).
[40] *Ibid* at paras 84-134.
[41] *Ibid* at para 227.
[42] *RJR-McDonald Inc v Canada (Attorney General)*, [1995] 3 SCR 199 [*RJR*].
[43] *Ibid* at paras 84, 184; *Chaoulli, supra* note 34 at paras 136-37.
[44] *Ibid* at para 67.
[45] Consider the following diverse examples: In ***R v Butler*, [1992] 1 SCR 452 at 484, 493, 513-14 [cited to SCR],** the Court relied on the *Fraser Report* and the *MacGuigan Report* to elucidate legislative purpose and the effects of

not always be "generally accepted" and beyond debate; however, evidence-based studies of law are few and far between, and a focused inquiry by lawmakers and their agents into the effects of law may be only evidence readily available to supplement common sense and reasonable hypotheticals.

If relevant government reports or government-commissioned studies do not exist, simple reliance upon common sense and reasonable hypotheticals may not be sufficiently powerful to provide the court with the impetus to invalidate a challenged law. In *Bedford*, the factual questions underlying the constitutional argument could have been answered with common sense and reasonable hypothetical argument. Although the policy issues surrounding many aspects of the sex trade are controversial, divisive and the subject matter of endless debate, it must be remembered that the factual issue raised in the case was far more simple: can safety be enhanced by moving indoors, recruiting assistance and communicating with clients? It seems that this question could be answered easily based upon common sense; nonetheless, it is hard to imagine the Court invalidating the sex trade provisions without the accompanying record of empirical study, experiential opinion and government-commissioned reports, which all spoke to the increased risk of violence faced by sex workers operating in the current legal regime.

Concluding Thoughts on Reducing the Costs of Constitutional Litigation

I do not think it is natural or inevitable that constitutional challenges should always be million-dollar ventures. There is no question that some claims are intertwined with complex social science or natural science data, and often this data is a matter of academic and scientific debate. In these cases one would expect that high costs will be incurred for collecting, presenting and analyzing the data; however, even in cases of complexity there are ways in which costs can be reduced.

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viewing pornography. See ***R v Caine*, [2003] SCJ No 79 at paras 3, 21, 44, 55-56, 58, 195-96**: the Court relied on the *Le Dain Report* and reports of the Senate Special Committee on Illegal Drugs and the House of Commons Special Committee on Non-Medical Use of Drugs for discerning legislative purpose, demographics of marijuana users, and the effects of marijuana use. In ***Moge v Moge*, [1992] 3 SCR 813 at 854-56, 863-64 [cited to SCR]**, the court relied on three Statistics Canada reports, the 1990 Department of Justice *Evaluation of the Divorce Act*, and the 1990 *Women and Poverty Revisited* report with respect to the demographics of single mothers and the economic impact of divorce. In ***R v Gladue*, [1999] 1 SCR 688 at paras 55-59** (the court relied upon the 1967 report *Indians and the Law*, the 1987 Canadian Sentencing Commission report, a report of the House of Commons Standing Committee on Justice and Solicitor General, a 1997 Federal/Provincial/Territorial report on population growth in prisons, and the five-year review of the *Corrections and Conditional Release Act* in evaluating the disproportionate impact of the criminal justice system on Aboriginal persons. In ***Reference re: Unemployment Insurance Act (Can.), ss. 22 and 23*, [2005] 2 SCR 669 at paras 19-20, 31, 64, 72**, the court relied on the *Rowell-Siros Report*, the *Gill Report*, the *Cosineau Report*, the *Boyer Report* and the *Forget Report* to reach conclusions about the systemic discrimination of women under the Unemployment Insurance regime.

First, as mentioned earlier, whenever possible the claim should be brought as an application for declaratory relief and not as a civil action. The latter process is time-consuming, unpredictable and presumptively more expensive than a process in which most of the work is done outside of court in a more informal setting. Frankly, I am not a civil litigator and I cannot speak to available procedural mechanisms for expediting civil trials in a cost-efficient manner, but I can say that I have been able to utilize the application process in an efficient manner such that I have been able to conduct numerous challenges for a fraction of the costs associated with a lengthy court battle.

Of more importance than the choice of procedure is the question of lawyers' fees, and it can be argued that *Bedford*, and other challenges I have brought, were inexpensive ventures due to the fact that lawyers' fees were not charged. Nonetheless, even when counsel is not willing or able to do the case on a *pro bono* basis, there is a simple way to reduce costs significantly. In general, I do believe that many lawyers are content to undertake public interest litigation at the reduced Legal Aid rate. The rising cost of constitutional litigation is not a product of the rate of pay (which is low) but the hours of preparation required for completion of the challenge. It is virtually impossible to predict the amount of time needed to prepare and present the claim and capping hours often works unfairly for those who work countless hours on the file.

In my experience, I have seen the real benefit of having a team of volunteer, or low-paid, students doing the bulk of the preparatory work. Some law schools have test case programs (in which students volunteer to assist lawyers conducting public interest litigation) and *Pro Bono* Students Canada is available for matching students with lawyers in need of research assistance. Accordingly, I believe that one of the only ways a new funding program can manage the potentially high costs of lawyers' fees is by developing a process and program in which law schools play a role in providing volunteer research assistance.

Finally, a great deal of thought needs to be directed to the issue of how to manage costs associated with the tendering of voluminous legislative fact evidence through numerous expert witnesses. Earlier, I mentioned that in my cases experts were willing to work for free partly because they did not have to draft their own affidavits, but rather just reviewed drafts completed by student research assistants. Beyond this facilitation of work, experts were often willing to assist for free because they believed in the "cause" and were happy to become involved, in what they perceived to be an "activist" role. Despite the savings in costs, recruiting experts who could be considered activists is a problem for maintaining the credibility and objectivity of the expert. Not only does one have to weigh the benefits of free evidence

against the potential negative assessment of credibility, one has difficult choices to make in terms of the type of expert to be called. The best evidence always emanates from the original researcher who authored the study to be relied upon, but often this expert is not available and, even if available, there are often many other experts who have done similar studies in an effort to replicate results. Therefore, it may be more efficient not to call all of the original researchers, but rather call an expert who can provide a literature review, and methodological assessment, of available studies.

If there is any hope of managing costs with respect to legislative fact evidence, it is important to be pragmatic and prudent with respect to both the type of experts to recruit and the number of experts required in order to adequately prove the legislative facts being relied upon. Accordingly, funding programs should exercise some degree of supervisory control over the choices made and strategies adopted regarding the tendering of legislative fact evidence. Even though there are principled reasons why funding programs should not routinely exercise control and direction over choices made by counsel, it is important to ensure good choices are being made with respect to the collection and presentation of legislative fact evidence as it is this task which is primarily responsible for the belief, and the reality, that Charter litigation has become cost-prohibitive.

APPENDIX A
Financials for *Bedford* Constitutional Challenge

Expense	Debit	Credit	Balance
Original Legal Aid Ontario grant		30,880.00	30,880.00
Legal Aid Ontario funding increase		14,389.00	45,269.00
General Expenses			
Binding, copying	79.50		45,189.50
Courier	476.69		44,712.81
Courier	36.05		44,676.76
Court fees	458.00		44,218.76
Fax charges	2.50		44,216.26
Out-of-office photocopies	1,645.96		42,570.30
Photocopying	7.50		42,562.80
Photocopying	3.50		42,559.30
Postage	2.60		42,556.70
Process Server	371.00		42,185.70
GST @ 5% for authorized disbursements	293.69		41,892.01
Process Server	126.00		41,766.01
Photocopies, binding – compendium	328.04		41,437.97
Tabs and supplies	77.00		41,360.97
Tabs	45.13		41,315.84
Canada Post – correspondence to clients	57.00		41,258.84
Canada Post/FedEx – docs to newspaper	37.98		41,220.86
Witness Travel Costs			
Frances Shaver - Air fare	276.21		40,944.65
Frances Shaver - Air fare	82.36		40.862.29
Eleanor Maticka-Tyndale - Air fare	130.00		40,732.29

Gayle MacDonald - Air fare	682.30		40,049.99
Wendy Harris - Air fare	287.65		39,762.34
Dan Gardner - Train fare	154.00		39,608.34
Cecilia Benoit - Air fare	644.76		38,963.58
Expense	**Debit**	**Credit**	**Balance**
John Lowman - Air fare	1,044.34		37,919.24
Ronald Weitzer - Air fare	940.18		36,979.06
Lauren Casey - Air fare	111.87		36,867.19
Barbara Sullivan - Air fare	2,853.67		34,013.52
Witness Hotel Costs			
Frances Shaver	106.54		33,906.98
Cecilia Benoit	128.07		33,778.91
Gayle MacDonald	127.84		33,651.07
Dan Gardner	128.07		33,523.00
Elliot Leyton	123.17		33,399.83
Ronald Weitzer	111.87		33,287.96
Lauren Casey	89.27		33,198.69
Barbara Sullivan	492.68		32,706.01
Counsel Travel Costs			
Alan Young - Edmonton & Vancouver Air Fare	1,455.68		31,250.33
Sabrina Pingitore - Edmonton Air Fare	564.34		30,685.99
AY and SP Edmonton Hotel	878.84		29,807.15
Alan Young - Vancouver Hotel	550.00		29,257.15

Costs Covered by Crown			
Ronald Weitzer - Air fare		940.18	30,197.33
Ronald Weitzer - Hotel		111.87	30,309.20
Lauren Casey - Air Fare		732.20	31,041.40
Lauren Casey - Hotel		89.27	31,130.67
Barbara Sullivan - Air Fare		2,853.67	33,984.34
Barbara Sullivan - Hotel		492.68	34,477.02
Expense	**Debit**	**Credit**	**Balance**
Transcription Costs			
Alexis Kennedy cross-examination	581.25		33,895.77
Mary Sullivan cross-examination	1,362.50		32,533.27
Melissa Farley cross-examination	1,806.25		30,727.02
Janice Raymond cross-examination	975.00		29,752.02
Eduardo Dizon cross-examination	787.50		28,964.52
Natasha Falle cross-examination	725.00		28,239.52
Oscar Ramos cross-examination	437.50		27,802.02
Oscar Ramos transcript copy	256.25		27,545.77
Edmonton cross-examinations (Quinn, Joyal,			
Morrissey)	1,924.12		25,621.65
Ronald Melchers and Richard Poulin			
cross-examinations	3,092.25		22,529.40
Delivery, handling & tax for court reporter			
invoice Nov 14 2008	164.75		22,364.65
Delivery, handling & tax for court reporter			
invoice Jan 12 2009	189.13		22,175.52

Other Costs			
IKON - Joint Application Record	4,149.50		18,026.02
Students on factum - Sheetal, Shoshana, Dan	7,500.00		10,526.02
Research assistance – Sabrina	500.00		10,026.02

The Federal Victim Surcharge

The 2013 Amendments and their Implementation in Nine Jurisdictions

Final Report

2016

Moira A. Law, PhD.

Department of Justice Canada | Ministère de la Justice Canada

Canada

The views expressed in this publication are those of the authors and do not necessarily represent the views of the Department of Justice Canada or the Government of Canada.

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Executive Summary

In October 2013, former Bill C-37, *Increasing Offenders' Accountability for Victims Act* (S.C. 2013 c.11), which doubled the amount of the federal victim surcharge (FVS) and removed judicial discretion of a waiver, came into effect. The Research and Statistics Division, Department of Justice Canada, was interested in better understanding how the 2013 amendments to the *Criminal Code* that were made to the FVS provisions (*Bill C-37*) have been working in terms of collection and enforcement in several jurisdictions since its coming into force on October 24, 2013. The results of this study will be used to identify the various impacts of the FVS 2013 amendments.

The ten primary research questions were:

1. a) What is the standard process in your jurisdiction followed by court staff/community corrections in order to collect the federal victim surcharge where the offender is unable to pay?

   b) Is this process documented in a policy, manual or guidelines? Y/N

2. Does your jurisdiction offer a Fine Option Program? Y/N

3. a) Is the Fine Option Program available to the federal victim surcharge? Y/N

   b) When did it become available?

4. Based on your records, since November 2013, how many offenders cannot pay their federal victim surcharge and are being referred to the Fine Option Program? What proportion of total offenders does this group represent?

5. Since November 2013, where offenders cannot pay their federal victim surcharge and there is no Fine Option Program, or it is not available in these cases, how is your jurisdiction enforcing these orders?

6. Based on your records, since November 2013 how many offenders' cases, in which their federal victim surcharge has not been paid, are referred to collection agencies? What proportion of total offenders does this group represent?

7. a) Since November 2013, what other measures are used to enforce payment of the federal victim surcharge in your jurisdiction? For example, income tax refund hold back, denial of renewal of driver's license, denial of renewal of other permits/licenses, etc.

   b) Were any of these measures added after former Bill C-37 came into force? If so, which ones?

8. Subsection 737(4) of the *Criminal Code* notes that the jurisdiction is to establish the time in which a surcharge must be paid and, "If no time has been so established, the surcharge is payable within a reasonable time after its imposition."

   a) Has a time frame been established by the Lieutenant Governor in Council of your jurisdiction? Y/N If so, what is the time frame?

   b) How was this time frame communicated? (e.g., memo to staff, issuance of guidelines, etc.)

   c) From your records, what percentage of the federal victim surcharge is being collected within a "reasonable time" as defined by your jurisdiction?

9. Based on your experience, what problems have you had with the enforcement of/collection of the federal victim surcharge?

10. Based on your experience in your jurisdiction, what has been the impact of the mandatory surcharge (e.g., since former Bill C-37 came into force) on:

    a) resources in courts administration and community corrections in your jurisdiction,

    b) revenues to fund victim services, and

    c) ability of offenders to complete their sentences?

Methodology

The methodology used in this study was predominantly qualitative in nature, complemented with a few broad statistics on the collection of the federal victim surcharge culled from various Justice Information Systems (JIS) across the country. Information on the present collection and enforcement process of the federal victim surcharge was collected through phone interviews and supplemented with written responses from 40 key informants in nine jurisdictions including Alberta, Newfoundland and Labrador, New Brunswick, Prince Edward Island, Nova Scotia, Ontario, Manitoba, Saskatchewan and Yukon; and two key informants from the Parole Board of Canada.

Key Informants

A total of 40 key informants from nine jurisdictions working in the Canadian criminal justice system participated in the study, as well as two key informants from the Parole Board of Canada. Four jurisdictions responded only in writing; while two jurisdictions' contributions were the culmination of one individual's efforts in pulling together relevant information from colleagues in various departments within their jurisdiction and relaying that information during a phone interview. The remaining three jurisdictions contributed information primarily through group/conference calls with two or more individuals participating during the same interview/call. Both individuals from the Parole Board of Canada were interviewed by phone.

Results

Fine Option Program

The Fine Option Program (Table 1) is available in all jurisdictions contacted except Newfoundland and Labrador, and Ontario, however, it is only available for federal victim surcharge satisfaction in these four jurisdictions: Alberta, Saskatchewan, Manitoba and the Yukon. Manitoba informants estimated that very few offenders, perhaps less than 5%, use this program to satisfy their federal victim surcharge. The other jurisdictions had no estimate of how many offenders use their Fine Option Program to satisfy the federal victim surcharge.

Table 1: Fine Option Program Availability

Province	Fine Option Program	Fine Option for FVS	Fine Option Available
Alberta	Yes	Yes*	2014
Saskatchewan	Yes	Yes	2014
Manitoba	Yes	Yes	2013
Ontario	No	-	-
New Brunswick	Yes	No	-
Newfoundland and Labrador	No	-	-
Nova Scotia	Yes	No	-
Prince Edward Island	Yes	No	-
Yukon	Yes	Yes	2013

*Only able to participate in the Fine Option Program if non-payment of those fines will result in a default period of custody

Interestingly, it was Nova Scotia, which does not use the Fine Option Program to satisfy the federal victim surcharge, that had the most to say about the effectiveness of their approach. They felt that not using the Fine Option Program had significantly and positively impacted the payment of the federal victim surcharge in their jurisdiction. From February 1990 until June of 2000 the Fine Option Program was available for the satisfaction of the federal victim surcharge; however, it was noted more times than not that the offender would work off the fine portion of their sentence and leave the surcharge unpaid. Amendments made in June of 2000 now require offenders to pay federal victim surcharge and court costs ***prior to being admitted*** into the Fine Option Program. In many cases where large fines need to be satisfied, this has provided a strong incentive for offenders to pay the federal victim surcharge in order to gain access to the Fine Option Program. Although there was no data to support this assertion, informants all agreed this change in policy has had an overall net positive effect on collection of federal victim surcharge in this jurisdiction.

Collection and Enforcement Methods

Various collection and enforcement methods (Table 2) were noted across all jurisdictions. Five jurisdictions use an internal government collection agency, whereas only two jurisdictions use a third party for collection services. Motor vehicle sanctions are consistently used by four jurisdictions, while the CRA Federal Refund Set-off Program is utilized by four jurisdictions. Only two jurisdictions engage default hearings/time served as their primary enforcement method.

Table 2: Collection/Enforcement Methods in Various Jurisdictions

Province	Internal Collection	External Collection	Driver's/Vehicle Licence Renewals	Default Hearing/Serve Time	CRA Federal Refund Set-off Program
Alberta	Yes	No	Yes	Yes	Yes
Saskatchewan	Yes	No	No	No[2]	Yes
Manitoba	No	Yes	No[1]	No[2]	No
Ontario	No	Yes	No	No	No[4]
New Brunswick	No	No	No	Yes	No
Newfoundland and Labrador	Yes	No	Yes	No	Yes[3]
Nova Scotia	Yes	No	Yes	No	Yes
Prince Edward Island	Yes[5]	No	Yes	No	No
Yukon	No	No	No	No	No

1 in the process of implementing this enforcement strategy
2 offenders can request to serve time in lieu of payment
3 if total fines owing exceed $300
4 in the process of implementing for the 2016-17 year
5 there is a Sheriff position dedicated to fine collection which includes the victim fine surcharge.

Time Frames

Subsection 737(4) of the *Criminal Code* notes that each jurisdiction is to establish the time in which a surcharge must be paid and "If no time has been so established, the surcharge is payable within a reasonable time after its imposition". A time frame to satisfy the federal victim surcharge has been established by the Lieutenant Governor in Council in only three jurisdictions (Table 3); however, interviewees in all other jurisdictions stated that a time frame to satisfy the federal victim surcharge is consistently, clearly and directly conveyed to the offender at the time of sentencing.

Table 3: Time Frame Established by Order in Council in Various Jurisdictions

Province	Yes/No	Established	Time Frame Used	Extensions Available?
Alberta	Yes	1999	As determined by legislation; ranging from 2 months-2years	Yes
Saskatchewan	Yes	1999	30 days	Yes
Manitoba	No	-	Typically 30 days; unless otherwise stated by judge at time of sentencing	Yes
Ontario	Yes	1999	30 days for summary conviction; 60 days for an indictable offence	Yes
New Brunswick	No	-	Default hearing date set at time of sentencing; judge confers with offender on time required	Yes
Newfoundland and Labrador	No	-	30 days (when no fine imposed) Fine imposed; judge confers with offender on time required	Yes
Nova Scotia	No	-	Judge confers with offender on time required; date set at time of sentencing	Yes
Prince Edward Island	No	-	Assigned by judge at time of sentencing	Yes
Yukon	No	-	Assigned by judge at time of sentencing	Yes

Impacts

There were very few impacts identified (Table 4) other than the "obvious burden being placed on offenders who clearly are unable to pay, e.g., homeless, unemployed, persons with addictions" that was articulated by several of the key informants. Additionally, substantial increases in paperwork for a few courts and minimal increases in another two courts were noted as impacts. Eight of the nine jurisdictions confirmed there have been increases in revenues generated for Victim Services (details Appendix B).

Table 4: Impacts due to Changes in the Federal Victim Surcharge

Province	Administration	Victim Services Fund	Offender's Sentence Completion
Alberta	No	Increase	No
Saskatchewan	Minimal Paperwork Increase	Increase	Unknown
Manitoba	Substantial Paperwork Increase Outdated JIS	Increase	No
Ontario	Minimal Paperwork Increase	Increase	Unknown
New Brunswick	Substantial Paperwork Increase Outdated JIS	Increase	No
Newfoundland and Labrador	No	Increase	Unknown
Nova Scotia	No	Increase	No
Prince Edward Island	No	Decrease	Yes
Yukon	No	Increase	Yes

During interviews with key informants there were several concerns raised that were not explicit in the interview protocol, but were related to the questions asked. Various jurisdictions noted issues relating to:

- information systems that are not automated, e.g., paper/pencil and filing cabinets,
- outdated justice information systems unable to answer simple queries,
- creative compassionate sentencing practices being employed by the Bench to work around the mandatory imposition of the surcharge,
- northern territories unable to utilize typical enforcement sanctions on the federal victim surcharge due to the wording of the *Criminal Code* ,
- the desire to have internal government collection agencies collect the federal victim surcharge.

Summary

The objective of this research was to develop a better understanding of the current status of collection and enforcement of the federal victim surcharge in cases where the offender is not compliant making their payment, as well as identify challenges that are present in the current process.

There is marked variability across jurisdictions on the processes used for the collection and enforcement of unpaid federal victim surcharge. Almost half of the jurisdictions questioned use internal collection

agencies (n 5), denial of motor vehicle license renewals (n 4), and CRA's Federal Refund Set-off Program (n 4); fewer jurisdictions use external third party collection agencies (n 2) and default hearings with subsequent time served (n 2) as enforcement mechanisms. Only one province uses all four mechanisms involving internal collections, denial of licence renewals, default hearings and the CRA's Federal Refund Set-off Program. Three jurisdictions use only one strategy. Finally, there is one jurisdiction that does not use any special strategies for collecting unpaid federal victim surcharge; the unpaid surcharge simply "sits on the books". Unfortunately, due to time constraints and archaic justice information systems there were not any data available that would illuminate how these enforcement techniques are related to local collection rates of the federal victim surcharge.

Further, it was found that the Fine Option Program is available for federal victim surcharge satisfaction in four jurisdictions; however, the rate this program is being used for that purpose was not available from any key informant. It was also noted that a time frame to satisfy the federal victim surcharge has been established by the Lieutenant Governor in Council in only three jurisdictions; however, every other jurisdiction establishes clear time frames for payment of the FVS at the time of individual sentencing.

Interviewees from the majority of jurisdictions (n=6) felt there has been minimal impact in terms of court services administration; as well, it was noted that there had been a consistent increase in funds available for Victim Services (n=8), and there was little comment on the impact of the FVS on the offenders' ability to complete their sentences. There was a variety of concerns raised during the interviews, the most notable involving outdated justice information systems (n=3) and creative sentencing practices being employed by the judiciary (n=8) to work around the mandatory imposition of the federal victim surcharge.

What was particularly striking about the interview process in this project was how many personnel and departments had to be consulted to garner the answers to the ten questions posed in the interview protocol. There was not a single jurisdiction where one individual, through no fault of their own, was aware of the complete process in cases where the federal victim surcharge is not paid in a timely manner. That being said, this is not a case where the federal victim surcharge is slipping through the proverbial cracks of the collection/enforcement process. Each jurisdiction does have a clear plan for recovery of these funds; however, the ***knowledge of this process is very compartmentalized***, with each department only aware of their piece of the collection/enforcement puzzle.

As the Department of Justice Canada moves forward in its efforts to understand how the federal victim surcharge regime has been evolving across the country, most notable is the high degree of variation among jurisdictions to approaching the collection and enforcement issues around the federal victim surcharge.

1. INTRODUCTION

1.1 Background

A federal victim surcharge is an additional penalty automatically imposed on offenders at the time of sentencing. There is a federal and in most jurisdictions, a provincial/territorial surcharge that is collected and retained by the provincial and territorial governments, and used to help fund programs, services and assistance to victims of crime within the provinces and territories.

The federal victim surcharge was first enacted in 1988 and proclaimed in 1989; it was called the "victim fine surcharge". Further amendments were enacted in 2000 to fix the amount and make it mandatory, although the judge had the discretion to waive the surcharge for reasons of "undue hardship." At this time, the surcharge became known simply as the "federal victim surcharge". Prior to Bill C-37, the judge was required to order the surcharge, which was 15% of any fine imposed on the offender, or if no fine was imposed, $50 in the case of an offence punishable by summary conviction and $100 in the case of an offence punishable by indictment. An increased surcharge, at the discretion of the judge, in appropriate circumstances could also be imposed and the fine option program could not be used to discharge a surcharge. The judge could waive the surcharge for reasons of undue hardship.

Research was undertaken by the Department in the early 90s to determine how the federal victim surcharge (FVS) was working. The studies showed that the federal victim surcharge was being waived the majority of the time and collection of the surcharge when imposed was not high.

A recommendation to increase the amount of the federal victim surcharge in the mid-2000s resulted in additional research being done. The Department conducted studies in three jurisdictions: New Brunswick, the Northwest Territories and Saskatchewan. Results were quite similar to the previous research, even with the 2000 amendments to the *Criminal Code* which made the imposition mandatory. In all three jurisdictions, the federal victim surcharge was waived in the majority of cases, particularly in cases where there were custodial sentences.

Bill C-37, *An Act to amend the Criminal Code* (or the *Increasing Offenders' Accountability for Victims Act*), was introduced in April 2012 and amendments to the surcharge provisions in the *Criminal Code* came into force on October 24, 2013. These amendments included:

- section 737(5) of the *Criminal Code* (the *Code*) to eliminate judicial discretion to waive the surcharge in cases of "undue hardship";
- section 737(2) of the *Code* to increase the federal victim surcharge from 15% to 30% of a fine imposed by the court;
- section 737(2) of the *Code* to increase the federal victim surcharge from $50 to $100 for offences punishable by summary conviction if no fine is imposed by the court; and
- section 737(2) of the *Code* to increase the federal victim surcharge from $100 to $200 for offences punishable by indictment if no fine is imposed by the court.

Bill C-37 also amended the *Criminal Code* to provide that offenders who are unable to pay the surcharge may be able to participate in a provincial fine option program where one exists. Not all the provinces and territories offer the fine option program under section 736 of the *Code*.

There is a need to understand how the federal victim surcharge regime is working since the former C-37 amendments came into force and effect in October 2013.

1.2 Purpose

The purpose of the present study is to understand:

1) What is the standard process followed by court staff/community corrections in order to a) collect? and b) enforce the federal victim surcharge when an offender is unable to pay?; and
2) What has been the impact of Bill C-37 amendments at the local level?

These issues were formulated into ten primary research questions:

1. a) What is the standard process in your jurisdiction followed by court staff/community corrections in order to collect the federal victim surcharge where the offender is unable to pay?

   b) Is this process documented in a policy, manual or guidelines? Y/N

2. Does your jurisdiction offer a Fine Option Program? Y/N

3. a) Is the Fine Option Program available to the federal victim surcharge? Y/N

   b) When did it become available?

4. Based on your records, since November 2013, how many offenders cannot pay their federal victim surcharge and are being referred to the Fine Option Program? What proportion of total offenders does this group represent?

5. Since November 2013, where offenders cannot pay their federal victim surcharge and there is no Fine Option Program, or it is not available in these cases, how is your jurisdiction enforcing these orders?

6. Based on your records, since November 2013 how many offenders' cases, where their federal victim surcharge has not been paid, are referred to collection agencies? What proportion of total offenders does this group represent?

7. a) Since November 2013, what other measures are used to enforce payment of the federal victim surcharge in your jurisdiction? For example, income tax refund hold back, denial of renewal of driver's license, denial of renewal of other permits/licenses, etc.

   b) Were any of these measures added after former Bill C-37 came into force? If so, which ones?

8. Subsection 737(4) of the *Criminal Code* notes that the jurisdiction is to establish the time in which a surcharge must be paid and, "If no time has been so established, the surcharge is payable within a reasonable time after its imposition."

   a) Has a time frame been established by the Lieutenant Governor in Council of your jurisdiction? Y/N If so, what is the time frame?

   b) How was this time frame communicated? (e.g., memo to staff, issuance of guidelines, etc.)

   c) From your records, what percentage of the federal victim surcharge is being collected within a "reasonable time" as defined by your jurisdiction?

9. Based on your experience, what problems have you had with the enforcement of/collection of the federal victim surcharge?

10. Based on your experience in your jurisdiction, what has been the impact of the mandatory surcharge (e.g., since former Bill C-37 came into force) on:

    a) resources in courts administration and community corrections in your jurisdiction,

    b) revenues to fund victim services, and

    c) ability of offenders to complete their sentences?

2. METHODOLOGY

All 13 jurisdictions were invited to participate in this study. Ultimately, nine jurisdictions participated: Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and the Yukon. Additionally, federal officials from the Parole Board of Canada participated. Phone interviews were conducted to collect information pertaining to the collection and enforcement process of the federal victim surcharge in various jurisdictions post former Bill C-37, which came into force on October 24, 2013. Possible key informants were identified by Department of Justice and contact information was given to the contractor. Letters of introduction and interview protocols (Appendix A) were forwarded to these initial points of contact in the hopes of identifying knowledgeable personnel willing to participate in the study. Initial contact was made either by phone or email.

Four jurisdictions responded only in writing, while two jurisdictions' contributions were the culmination of one individual's efforts in pulling together relevant information from colleagues in various departments within their jurisdiction and relaying that information during a phone interview. The remaining three jurisdictions contributed primarily through group/conference calls with two or more individuals participating during the same interview/call. Both individuals from the Parole Board of Canada were interviewed by phone.

A single interview protocol was used to bolster convergent validity of the qualitative data collected. In cases where informants did not feel they had an opinion or information regarding the question asked, they were instructed to indicate that lack of insight and the interviewer moved on to the next question. Interviews ranged in time from 15 to 75 minutes. Information collected during the interview was occasionally (n=4) supplemented with written notes provided by key informants forwarded in emails after the interviews.

3. RESULTS

Results are presented by jurisdiction.

3.1 The Alberta Experience

There were a total of nine participants from the Alberta Justice System. These key informants came from five divisions within one department.

The primary key informants (n=9) included:

- Special Initiatives Project Lead, Victims Services, Justice and Solicitor General, Alberta
- Legal Counsel, Justice and Solicitor General, Alberta
- Administrator, Justice and Solicitor General, Alberta
- Research & Evaluation Analyst, Strategic Information and Evaluation, Resolution and Court Administration Services, Justice and Solicitor General, Alberta
- Executive Director, Strategic Services Branch, Correctional Services Division, Justice and Solicitor General, Alberta
- Director of Collections, Claims & Recoveries, Justice Services, Justice and Solicitor General, Alberta
- Collections Supervisor, Justice and Solicitor General, Alberta
- Director, Policy Unit, Justice and Solicitor General, Alberta
- Policy Counsel, Justice and Solicitor General, Alberta

3.1.1 Standard Collection Process

In Alberta, unpaid federal victim surcharges are given to the Fines Enforcement Program after the time period given to pay has expired. This is clearly documented in internal procedure manuals. In a minority of cases, offenders whom are unable to pay their surcharge choose to serve the days in default instead of paying the fine amount.

3.1.1.1 Fine Option Program

The Fine Option Program (FOP) has been available in Alberta for federal victim surcharges since 2014. FOP policy was updated in October 2013 to reflect the changes regarding working off federal victim

surcharges; however, amendments to the Fine Option Order are currently being discussed to ensure clarity concerning their inclusion in the program.

At present, the program allows offenders that are sentenced to pay the federal victim surcharge to participate in the Fine Option Program ***only if non-payment of those fines will result in a default period of custody***. It allows offenders to satisfy the financial terms of their fines through community work service. They can perform this service in lieu of, or as a supplement to, the cash payment of the federal victim surcharge. The compensation rate is set at minimum wage standards. This monetary amount is used to compute the number of hours required to meet the court financial requirements. When enough credits are earned, a voucher is issued to the clerk of the court indicating that the requirements of the fine have been satisfied.

Exact numbers of how many offenders use the Fine Option Program to satisfy their federal victim surcharge are not available as data would need to be pulled from the Justice Offender Information Network (JOIN) which involves request forms and weeks of waiting to receive the information data, a time frame that could not be accommodated in this short project. Although the Fine Option Program is available, the program was not designed for the significant increase in offenders that may occur due to the mandatory nature of the federal victim surcharge.

3.1.2 Standard Enforcement Process

Overdue surcharge payments are handled by the Fines Enforcement Program, a division of Alberta Justice and Solicitor General that works in conjunction with the Alberta Courts. Other standard enforcement strategies such as withholding motor vehicle license renewals and the CRA federal off-set program are utilized in this jurisdiction. Default hearings and subsequent time served are also used to satisfy the federal victim surcharge in Alberta.

3.1.2.1 Reasonable Time

Subsection 737(4) of the *Criminal Code* notes that the jurisdiction is to establish the time in which a surcharge must be paid. This time frame was established by the Lieutenant Governor in Council of Alberta's jurisdiction on December 15, 1999 by Order in Council 523/1999.
It states in this Order,

> (a) "offence" means an offence referred to in section 737 of the *Criminal Code* (Canada);
>
> (b) "federal victim surcharge" means a victim surcharge imposed under section 737 of the *Criminal Code* (Canada).

2 If a federal victim surcharge is imposed on a person convicted of an offence or discharged under section 730 of the *Criminal Code* (Canada) of an offence and a fine is not imposed in respect of that offence, that federal victim surcharge is payable by that person within the following time periods:

(a) where a ***non-custodial sentence*** is imposed, ***within 2 months from the date of the sentencing*** of that person;

(b) where a custodial sentence is imposed, within the sooner of

(i) 2 months from the expiry date of the warrant of committal issued in respect of that person, or

(ii) 2 years from the date of the sentencing of that person;

(c) where a ***conditional or intermittent sentence is imposed***, within ***2 months from the date of the sentencing*** of that person.

3 Notwithstanding section 2, if:

(a) an information sets out more than one offence,

(b) a person is convicted of more than one of those offences and a fine is imposed on that person at the time of sentencing in respect of any one or more but not all of those offences for which the person is convicted, and

(c) a federal victim surcharge is imposed on that person in respect of one or more of the offences for which the person is convicted but for which a fine was not imposed, that federal victim surcharge is payable by that person,

(d) where the person is convicted of more than one of those offences but a fine is imposed in respect of only one of the offences, on or before the date on which that fine is payable, or

(e) where the person is convicted of more than one of those offences, a fine is imposed in respect of more than one but not all of those offences and those fines are payable on different dates, on or before the last of those dates.

This established time frame has been the subject of confusion since its inception and it is going to be revised in the near future to further clarify the time frames established in this legislation.

3.1.3 Impacts Due to Changes in the FVS

When asked what the impacts have been on the federal victim surcharge regime in Alberta since former Bill C-37 came into force in October 2013, it was stated there have been "substantial repercussions due to the removal of judicial discretion in relation to the imposition of a mandatory federal victim surcharge for all offences that has caused a number of concerns in Alberta." The primary concern has been the number of "creative" judicial approaches to either avoid imposing the surcharge, or to impose meaningless or unenforceable conditions on its payment.

For example, some judges will simply indicate that they are waiving the surcharge, despite the fact that the amendments made it mandatory. Although this error could be appealed, it is simply not feasible from a resource perspective to pursue an appeal in all cases in which this occurs. The costs of pursuing the appeal would far outstrip the benefit of having the offender ordered to pay the surcharge. There is no record of any appeal on such grounds.

Other judges commonly will state that they are imposing the federal victim surcharge, but ordering that its payment is satisfied by the offender's appearance in court on the date of sentencing by imposing one day in default with no warrant of committal.

Still other judges will impose the federal victim surcharge, but then grant an excessively lengthy period of time to pay. For example, some offenders have been given as long as 30 years to pay the surcharge. This results in a meaningless order and completely frustrates the province's ability to collect the surcharge.

Other judges will accept counsel's submissions that a fine is an appropriate sentence, but then order that the fine imposed is inclusive of the surcharge. This has the effect of reducing the amount of the fine accordingly, which arguably affects the fitness of the sentence.

Further, it was noted by victim service providers that where "creative" judicial approaches have been used, victims have reported a lack of confidence in the judicial process. It was speculated that this negative impact on overall victim satisfaction is "likely to spread to the public at large, leading to low public confidence in the judiciary." It was further posited that this potential lack of confidence could not only "bring the proper administration of justice into question, but does nothing to assist victims."

Another concern raised related to the enforcement/collection process. Respondents stated that "impecunious offenders may find themselves in a position of simply being unable to pay the mandatory surcharge." To support this assertion, a recent study was quoted that surveyed individuals being released from the Edmonton Remand Centre indicating that 14% of these individuals did not have a place to stay or a home to go to on release; half of those individuals were released from custody with no personal funds whatsoever. This was offered as a demonstration of the limited financial means and unstable housing facing a significant percentage of offenders in this jurisdiction.

3.1.3.1 Administration

There has not been a significant increase in administrative tasks due to the increased levying of federal victim surcharges in Alberta. It was stated that manual calculations are required by court services when determining the amount of the federal victim surcharge, even though the bulk of the justice system is automated in this jurisdiction.

Further, Alberta has not experienced an increase in costs associated with litigation related to the 2013 FVS amendments. There are no reported cases in which the amendments were challenged and there are no appellate decisions addressing the changes.

3.1.3.2 Victim Services Revenues

It is interesting to note that there was a substantial decrease in FVS collected during the fiscal year when former Bill C-37 came into force. Revenues plummeted over $1 million dollars that year, dropping from $2,723,000 during 2011-12 to $1,721,000 collected in 2012-13. Similar to other jurisdictions that experienced this dramatic drop during the C-37 timeframe, there has been a steady increase in revenue noted in the past three years; however, the highest collection year for the FVS remains ***prior*** to October 2013.

Table 3.1.1 Federal Victim Surcharges Imposed and Collected for Alberta by Fiscal Year, 2010-2015

Year	FVS Imposed	FVS Collected
2010-11	N/A	$1,439,000
2011-12	N/A	$2,723,000
2012-13	N/A	$1,721,000
2013-14	N/A	$1,995,000
2014-15	N/A	$2,188,000

It was noted by some interviewees that "although there may be an increase in revenues for victim services, the imposition of a mandatory federal victim surcharge on impecunious offenders is not effective as it does not provide revenues to fund victim services and therefore does nothing to provide for support of victims." An overall collection rate of federal victim surcharge for this jurisdiction could not be estimated.

3.1.3.3 Offenders' Sentence Completion

When the legislation came into force in October 2013, personnel in Alberta Corrections expressed significant concern with the potential impact the lack of judicial discretion would have on the Fine Option Program participants, as well as the custodial population. Although numbers were not cited, these concerns still remain, as there is a perceived strain on resources and bed availability due to the inability of offenders to pay their fines and surcharges.

3.1.4 Local Recommendations

There were no specific recommendations from this jurisdiction.

3.2 The Saskatchewan Experience

There were a total of four participants from Saskatchewan. The informants all came from one department, but were from three different programs.

The primary key informants (n=4) included:

- Executive Director, Community Justice Division, Saskatchewan Ministry of Justice
- Manager, Financial Programs, Victim Services, Community Justice Division, Saskatchewan Ministry of Justice
- Senior Analyst, Criminal Justice Information Management System, Saskatchewan Ministry of Justice
- Manager, Fine Collection Branch, Saskatchewan Ministry of Justice

3.2.1 Standard Collection Process

Tracking the payment of the federal victim surcharges in Saskatchewan is a highly automated regime. The surcharge is immediately typed into the computer system at the time of imposition; with reminder letters automatically issued on day 30 when payment is not collected according to the legislated time frame. The outstanding federal victim surcharge amount is then automatically sent to the Canadian Revenue Agency (CRA) on day 90, where the primary enforcement mechanism of the Federal Refund Set-off Program is then activated.

3.2.1.1 Fine Option Program

The Fine Option Program has been available for federal victim surcharge satisfaction since March 2014. The informants could not speak to the number of offenders utilizing the Fine Option Program for federal victim surcharge satisfaction.

3.2.1.2 Collection Rates

Collection rates over the five year period from 2010-2015 averaged at 79%. This was the highest collection rate in the country for those jurisdictions that collection rates could be calculated.

3.2.2 Standard Enforcement Process

As stated previously, the outstanding federal victim surcharge is automatically sent to the Canadian Revenue Agency (CRA) when the time period to pay has expired, at which point the primary enforcement mechanism of the Federal Refund Set-off Program is then activated. There are no third party external collection agencies utilized in this jurisdiction for outstanding federal victim surcharge. Finally, it was noted that offenders may apply to serve time in lieu of payment of the federal victim surcharge.

3.2.2.1 Reasonable Time

A reasonable time frame, of 30 days, to satisfy the federal victim surcharge ***has been established*** by the Lieutenant Governor in Council in this jurisdiction. Informants were unable to comment on the percentage of federal victim surcharge being collected in a timely manner.

3.2.3 Impacts Due to Changes in the FVS

When asked what problems have arisen with the enforcement/collection of the federal victim surcharge it was stated that "the standard problems for any collection process; these problems are not unique to the federal victim surcharge."

3.2.3.1 Administration

It was felt that there has been a minimal administrative impact e.g., higher number of phone calls requesting extensions, due to the mandatory imposition of the federal victim surcharge.

3.2.3.2 Victim Services Revenues

There has been a dramatic increase in the dollar amount of federal victim surcharge both imposed and collected since October 2013 in this jurisdiction. What is particularly striking is the high proportion of federal victim surcharge that been collected in the five year period, 2010-15, averaging at 79%.

Those interviewed believe this increase in collection rate is primarily due to the changes in the *Criminal Code*; however it was acknowledged this could be in part due to a third variable like an increase in collection efforts, population growth, etc.

Table 3.2.1: Federal Victim Surcharges Imposed and Collected for Saskatchewan by Fiscal Year, 2010-2015

Year	FVS Imposed	FVS Collected
2010-11	$687,041	$516,754
2011-12	$699,484	$541,794
2012-13	$731,995	$687,412
2013-14	$1,237,052	$1,124,861
2014-15	$3,873,651	$2,838,517

3.2.3.3 Offenders' Sentence Completion

The informants did not feel they could comment on this question.

3.2.4 Local Recommendations

There were no recommendations from this jurisdiction.

3.3 The Manitoba Experience

There were a total of four participants from the Manitoba Justice System representing the Courts Division (n -3) and the Fine Option Program (n 1).

The primary key informants (n=4) included:

- Executive Director, Manitoba Court Services, Courts Division, Manitoba Justice
- Senior Revenue Policy Analyst, Courts Division, Manitoba Justice
- Manager of Revenue and Trust Processing, Courts Division, Manitoba Justice
- Manager of Community Support, Intake and Records, Fine Option and Community Service Work Program, Court Report Writing Unit, Manitoba Department of Justice

3.3.1 Standard Collection Process

In Manitoba, at the time of sentencing the judge directs the offender to pay their surcharge or sign up for the Fine Option Program. Information respecting the Fine Option Program is included on the Fine Order provided to offenders at the time of sentencing. The standard collection process for offenders who do not pay their surcharge is not documented in any official capacity. There are no guidelines, written policies or manuals outlining this process. When the Fine Option Program became available to offenders to satisfy their federal victim surcharge, an email was sent to the appropriate departments to inform everyone of this development.

3.3.1.1 Fine Option Program

In Manitoba, there is a Fine Option Program and it is available to offenders to satisfy the FVS. Offenders **must request this option**; they are not automatically diverted there. Again, offenders volunteer to participate in this program. It was estimated that very few offenders utilize the Fine Option Program in this jurisdiction, perhaps less than 5% of those with a federal victim surcharge to satisfy.

The Fine Option Program has been available for the surcharge payment since 2013. It was described as a small program with three personnel - a clerk, a manager and a community corrections worker - to run the program for the entire province. In rural areas, Probation Officers are tasked with Community Corrections Coordinator responsibilities to provide oversight where the Fine Option Program is available. A short interview is conducted upon intake to the Fine Option Program in order to ensure any special conditions that would be required are fulfilled, e.g., high risk offenders requiring more supervision/avoid certain

placements. In larger urban centers, with the support of other community services, e.g. Salvation Army Correctional Service, the program runs smoothly with strong supervision and ample work opportunities; however, the corollary also holds true in that many rural areas there are few work opportunities and little to no supervision available (e.g. in First Nation communities). If participants in the Fine Option Program fail to complete their work term, the court is advised of their termination in the program and the surcharge will then "sit on the books," as no warrant of committal/arrest will be issued. In order to avoid a "revolving door" in the Fine Option Program, offenders cannot return to the program to work off a specific fine surcharge they have failed to complete within a reasonable time frame; however they are able to register for ***other*** fine commitments in the future. Reasonable time frames for completion vary depending on the work assigned and the judgment of the individual supervisor, who typically investigates the reasons why the work is not being completed. Legislation dictates there is a total 24 month time frame in which the work must be completed; however, there is an appeal process for exceptional circumstances (e.g. pregnancy). It was estimated that between January 2014 and May 2016, approximately 62% of the offenders successfully completed their fine obligations, while 38% failed to complete the number of hours required to satisfy their fine. There were no data available to substantiate this claim as the Fine Option Program has been using a paper-based administration method since the computer system died over a decade ago.

3.3.1.2 Collection Rates

The justice information system "does not easily allow for this information to be accessed", therefore, estimates for collection rates of the federal victim surcharge were not able to be calculated.

3.3.2 Standard Enforcement Process

The federal Public Prosecution Services of Canada (PPSC) enforces fine and surcharges ordered for *Controlled Drugs and Substances Act* offences. For other offences with penalties that include the federal victim surcharge or stand-alone federal surcharges ordered, the enforcement process is "the same as any other fine collection" in the Manitoba justice system. There was a consensus among informants that if the surcharge was not paid right away, then it could take some time before it was collected, but this could not be confirmed with data. Informants stated there are no default hearings specifically related to the surcharge. The Canada Revenue Agency Federal Refund Set-off Program is currently not being utilized in this jurisdiction. All of these mechanisms in the collection/enforcement process were in place before Bill C-37.

3.3.2.1 Reasonable Time

A reasonable time frame to satisfy the federal victim surcharge has not been established by the Lieutenant Governor in Council in this jurisdiction. Further, data was not available to speak to the question on whether the surcharge is collected in a timely manner. It was noted that this was due to the fact that the records for this would require a manual extraction, i.e., paper/pencil endeavour.

Although current data was not available for examination, it was the opinion of all four informants that **most** FVS are **not being paid within a reasonable time**.

At this point, it was mentioned that there is no standard time established to send the surcharge to a third party collection agency as it depends on many factors, and creative sentencing practices by the bench can further complicate the process. In some instances, judges assign a very low fine (e.g. $13 which includes the $10 base fine and $3 federal victim surcharge). The cost of administering these types of penalties and the cost of using a collection agency becomes economically futile.

3.3.3 Impacts Due to Changes in the FVS

The consensus among key informants is that collection of the FVS in Manitoba has many challenges. The primary concerns rest in the manual information management system (i.e. paper-based) that is still in place to collect, track and enforce the surcharge regime.

3.3.3.1 Administration

There has been a significant increase in paperwork related to the amendments of 2013. It was estimated that the number of "fine orders have tripled" and that the federal victim surcharge "feels like just one more thing to collect."

3.3.3.2 Victim Services Revenues

The annual revenue for victim services in Manitoba has consistently been in the range of $250,000 for the past five years, save for a leap to $425,281 in the past fiscal year (2014-15). This jump represents an increase of $172,000 of revenue from the previous year's revenue of $253,940. Officials could not say whether this increase is due to the mandatory FVS or increased collection efforts or a combination of factors.

Table 3.3.1: Federal Victim Surcharges Imposed and Collected for Manitoba by Fiscal Year, 2010-2015

Year	FVS Imposed	FVS Collected
2010-11	N/A	$250,498
2011-12	N/A	$231,303
2012-13	N/A	$265,152
2013-14	N/A	$253,940
2014-15	N/A	$425,281

3.3.3.3 Offenders' Sentence Completion

In this jurisdiction, there are no default hearings set; offenders, however, can request to serve time in lieu of payment.

3.3.4 Local Recommendations

There was consensus that a "complete overhaul" of the justice information system is needed in order to be able to answer regular data queries tracking the imposition and collection of the surcharge, but also to expedite the very processes being discussed (e.g. automated notifications/letters).

3.4 The Ontario Experience

There were five participants from Ontario who responded in writing to the interview questions from one department.

- Senior Research Analyst, Business Planning Unit, Divisional Support Branch, Court Services Division, Ministry of the Attorney General, Ontario
- Consulting Manager, Criminal Operations, Ministry of the Attorney General, Ontario
- Financial Analyst, Ministry of the Attorney General, Ontario
- Senior Manager, Analytics, Ministry of the Attorney General, Ontario
- A/Director, Criminal/Provincial Offences Act, Policy and Programs Branch, Ontario

3.4.1 Standard Collection Process

All federal victim surcharges that remain unpaid are sent to the Ministry of Finance. These accounts are assigned to external third party Private Collection Agencies (PCAs), who then negotiate a payment plan with the offender based on what the offender can pay on a time schedule. One hundred percent of cases that have a defaulted federal victim surcharge are sent to collection agencies.

3.4.1.1 Fine Option Program

The Fine Option Program is not available in Ontario.

3.4.2 Standard Enforcement Process

At present the only enforcement process in place involves sending the outstanding federal victim surcharges to external third party Private Collection Agencies (PCAs); however, the Ministry of the Attorney General and the Ministry of Finance are working closely to begin a file transfer in 2016 17 to the Canada Revenue Agency (CRA) for income tax refund hold back.

3.4.2.1 Reasonable Time

The Lieutenant Governor in Council set the following by Order in Council on December 8, 1999:

> *When no fine is imposed, the federal victim surcharge imposed for a summary conviction offence shall be payable within 30 days from the date the surcharge is imposed; the federal victim surcharge imposed for an offence punishable by indictment shall be 60 days from the date the surcharge is imposed.*

Offenders may request that the time given to pay the federal victim surcharge be extended by the Court by completing a form entitled "Application for Change of Terms and Conditions of a Fine Order" and filing it with the Court, where the order was made.

3.4.3 Impacts Due to Changes in the FVS

The impacts on this jurisdiction have been felt minimally in terms of administration of the federal victim surcharge regime but significantly in terms of the revenue generated for victim services.

3.4.3.1 Administration

There is some additional workload given federal victim surcharge orders must be completed in every case now, however the completion of these orders isn't especially time consuming.

3.4.3.2 Victim Services Revenues

Key informants noted that the total revenue for the federal victim surcharge was $1.1 million for the fiscal year ending March 31, 2013, which is the year immediately prior to the implementation date of October 2013. This represented approximately 2% of the total $46.9 million Victims' Justice Fund revenue collected that year. Total federal victim surcharge revenue collected was approximately $4 million for 2015-16. This represents approximately 8% of the total $47.4 million dollar collected in Victims' Justice Fund Revenue for 2015-16, representing an increase of approximately 6% in funding since the changes in October 2013. They stated that "this increase may not be considered significant in terms of total dollar revenues collected; however the increase has allowed the ministry to sustain its existing levels for spending on victim programs."

Further, when examining the trends of imposition and collection of the federal victim surcharge over the past six years the revenues generated have been consistently hovering around $1.2 million dollars; however, there was a marked increase in 2014-15 with $3.2 million collected on a $9.8 million imposition. The overall collection rate for the five year period from 2010-2015 has been estimated at 46%.

Table 3.4.1: Federal Victim Surcharges Imposed and Collected for Ontario by Fiscal Year, 2009-2015

Year	FVS Imposed	FVS Collected
2009-10	$1,583,851	$988,638
2010-11	$1,781,712	$1,242,612
2011-12	$1,579,184	$1,222,701
2012-13	$1,907,932	$1,278,499
2013-14	$3,373,362	$1,342,272
2014-15	$9,827,640	$3,240,072

3.4.3.3 Offenders' Sentence Completion

There are no known impacts on the offenders' ability to complete their sentence in this jurisdiction.

3.4.4 Local Recommendations

There were no recommendations from this jurisdiction.

3.5 The New Brunswick Experience

There were a total of five participants from the New Brunswick Justice system. The five key informants came from a total of two departments and three divisions.

The primary key informants (n=5) included:

- Regional Director, Court Services, Department. of Justice, New Brunswick
- Manager, Victim Program Support Services, Department. Public Safety, New Brunswick
- Senior Policy and Program Analyst, Criminal Court Services, Department. of Justice, New Brunswick
- Operations Management Information Consultant, Department. of Justice, New Brunswick
- Criminal Court Clerk, Court Services, Department. of Justice, New Brunswick

3.5.1 Standard Collection Process

In New Brunswick the offender is provided a default hearing date at the time the federal victim surcharge is imposed. Where the federal victim surcharge is not paid, two scenarios could then unfold: if the surcharge is unpaid and the offender appears for the default hearing, the court imposes jail time; if the surcharge is not paid and the offender does not appear for the default hearing, a warrant of committal is then issued.

None of the informants were aware of any official documentation of this process as the judges know to assign the default hearing date at the time of sentencing.

3.5.1.1 Fine Option Program

The Fine Option Program does exist in New Brunswick; however, it is not available for FVS satisfaction.

3.5.2 Standard Enforcement Process

At the time of the previous research study in 2006 in the province (Law and Sullivan, 2006), the sole enforcement strategy of the federal victim surcharge regime in New Brunswick was, and still is, incarceration. The length of time is determined by the current default formula whereby an amount equal to eight times the provincial minimum hourly wage can be satisfied by one day spent in jail. If, for example, an offender failed to pay a $50 surcharge, this would only result in a single day's incarceration, which in fact the offender does not serve. Anecdotal evidence was offered that judges are known to

engage in creative sentencing practices that in fact result in no time being served in lieu of payment of the surcharge; this was not considered to happen in the majority of cases, but rather in situations where individuals are "clearly unable to pay" due to addictions, unemployment, and/or homelessness.

3.5.2.1 Reasonable Time

A reasonable time frame to satisfy the federal victim surcharge has not been established by the Lieutenant Governor in Council in this jurisdiction. Further, data were not available to speak to the question on whether the surcharge is collected in a timely manner. It was noted that this was due to the fact that the current justice information system does not easily lend itself to "these sorts of requests" and the information would in fact have to be gleaned in a case by case manner to answer such a query.

3.5.3 Impacts Due to Changes in the FVS

When asked what problems New Brunswick has had with enforcement/collection of the federal victim surcharge the informants claimed there were "none, as it is a very straightforward process in NB where the offender is given the date of their default hearing at the time the fine is imposed." However, when the question was reworded to ask what the "challenges" have been, the information in the following sections was given.

3.5.3.1 Administration

There has been a marked (in fact the word used was "huge") increase in the paperwork for court staff that is now related to the surcharge regime that was not the case before the 2013 amendments, as there are now more default hearings, warrants of committal and warrants of arrest being issued. Clearly, the burden of the amendments has fallen on the shoulders of the court staff and the local police force executing the warrants of committal/arrest.

3.5.3.2 Victim Services Revenues

Over the past five years, New Brunswick has not exhibited a clear positive trend of increased federal victim surcharge revenue. Revenues steadily decreased from $310,634 in 2010-11 to $257,219 in 2012-13, until rebounding up to $353,052 and $536,014 collected in the last two years. Most notably, the imposition rate of the federal victim surcharge more than doubled in the last year reported, jumping from $514,511 in the previous year to $1,253,911 in 2014-15. The overall collection rate for the five year period from 2010-2015 has been estimated at 64 %.

Table 3.5.1: Federal Victim Surcharges Imposed and Collected for New Brunswick by Fiscal Year, 2010-2015

Year	FVS Imposed	FVS Collected
2010-11	$353,462	$310,635
2011-12	$334,960	$295,719
2012-13	$295,082	$257,219
2013-14	$514,511	$353,052
2014-15	$1,253,911	$536,014

3.5.3.3 Offenders' Sentence Completion

The process in New Brunswick does not hinder the sentence completion in any manner as an unpaid surcharge translates into time to be served. However, most often, time is not actually served.

3.5.4 Local Recommendations

There was an emphatic "suggestion" that the justice information system needs to be updated in order to facilitate future research requests, as well as improve the day-to-day operations of the court system.

3.6 The Newfoundland and Labrador Experience

There were a total of four participants from the Newfoundland and Labrador justice system. The informants came from one department and three programs.

The primary key informants (n=4) included:

- A/Provincial Manager of Victim Services Program, Department of Justice and Public Safety
- A/Departmental Controller, Department of Justice and Public Safety
- Provincial Manager of Corporate Services, Provincial Court, Department of Justice and Public Safety
- Court Manager, St. John's, Provincial Court, Department of Justice and Public Safety

3.6.1 Standard Collection Process

When the federal victim surcharge payment is overdue, the court will transfer it to the Fines Administration Division of Justice and Public Safety (JPS) for follow up by departmental collection officers.

3.6.1.1 Fine Option Program

There is no Fine Option Program.

3.6.1.2 Collection Rates

The overall collection rate for the five year period from 2010-2015 has been estimated at 66%.

3.6.2 Standard Enforcement Process

When the payment of the surcharge is overdue, the Court will transfer the surcharge to the Fines Administration Division of the JPS for follow up by departmental collection officers. The officers have the ability to withhold driver license renewals, vehicle renewals and engage in other standard collection activities like including attachment through CRA Federal Refund Set-off Program and registration on the Judgment Enforcement Registry. These latter enforcement techniques are only utilized if the total fines owing by a debtor, including the federal victim surcharge, exceed $300. All of these enforcement techniques were available before the changes in 2013. Collection is internal to the Newfoundland and Labrador government; no third party is used.

3.6.2.1 Reasonable Time

A reasonable time frame to satisfy the federal victim surcharge has not been established by the Lieutenant Governor in Council in this jurisdiction. However, where there is no fine imposed by the court for an offence, any federal victim surcharge shall be paid within 30 days of conviction or discharge. The accused is given a copy of their fine order that has the time frame included. The percentage of the federal victim surcharge that is being collected within a reasonable time in this jurisdiction could not be extracted from the database due to the short time frame of this project.

3.6.3 Impacts Due to Changes in the FVS

When asked what problems have been encountered with the enforcement/collection of the federal victim surcharge it was stated that "we have the standard problems for any collection process - inability to locate the debtor, the debtor not being cooperative, etc. These problems are not particular to the federal victim surcharge."

3.6.3.1 Administration

It was felt that there has been minimal impact on the Court. Staff may issue additional orders; this process, however, is automated so it does not have a major impact on resources. If there has been any drain in resources, it has been the extra time spent explaining the purpose of the federal victim surcharge to offenders; with fewer cases being waived due to the mandatory imposition, the numbers of offenders requiring this explanation has increased.

3.6.3.2 Victim Services Revenues

Over the past five years, there has been an increase in revenue collected for victim services in this jurisdiction. Although there has not been a consistent annual increase in revenue collected, there is a significant increase from the $188,245 collected in 2010-11 compared to the $290,530 in 2014-15.

Informants stated that regardless of increases in revenue realized for victim services, "the revenues collected from the federal victim surcharge continue to be less than the amount of funding required to provide services to victims."

Table 3.6.1: Federal Victim Surcharges Imposed and Collected for Newfoundland and Labrador by Fiscal Year, 2010-2015

Year	FVS Imposed	FVS Collected
2010-11	$179,217	$188,245
2011-12	$200,230	$232,806
2012-13	$164,383	$186,535
2013-14	$260,128	$174,649
2014-15	$830,029	$290,530

3.6.3.3 Offenders' Sentence Completion

The informants did not feel they could comment on this question.

3.6.4 Local Recommendations

There were no recommendations from this jurisdiction.

3.7 The Nova Scotia Experience

There were a total of five participants from the Nova Scotia Justice System. The key informants came from three departments and four different programs.

The primary key informants (n=5) included:

- Director of Victim Services, Court Services Division, Nova Scotia Department of Justice
- Court Administrator, Court Services Division, Nova Scotia Department of Justice
- Records Management Clerk, Court Services Division, Nova Scotia Department of Justice
- Senior Probation Officer, Correctional Services
- Manager, Service Nova Scotia Collections

3.7.1 Standard Collection Process

At the time of sentencing, the judge confers with the offender on exactly how much time he or she needs to pay their fine; the Bench then sets the date for the federal victim surcharge to be paid. The offender may return to court in that time period to ask for an extension. Once this date expires, however, without an extension requested, the surcharge will be immediately and automatically (i.e. next day) be sent to an internal collection agency in the government. Once sent to collections, payment is still accepted at the court, in which case both offices would be notified of the payment. This is not a new process and it has been "business as usual" since prior to 2013 amendments. There is no specific record keeping of unpaid surcharge at the court level; if the payment is offered it is accepted. It was noted that in the case of partial payment, the portion paid would be applied first to the surcharge, then to court costs and finally to the fine proper.

3.7.1.1 Fine Option Program

Nova Scotia does in fact have a Fine Option Program, but it is not available for the federal victim surcharge. That being said, it still significantly and positively impacts the payment of the federal victim surcharge. From February 1990 until June of 2000 the Fine Option program was available for the satisfaction of the FVS. The key informants noted more times than not, the offender would work off the fine portion of their imposition and leave the federal victim surcharge unpaid. Amendments made in June of 2000 now require offenders to pay federal victim surcharge and court costs prior to being admitted into the Fine Option Program. In many cases where large fines need to be satisfied, this has provided a strong

incentive for offenders to pay the federal victim surcharge in order to gain access to the Fine Option Program. Although there was no data to support this assertion, informants all agreed this change in policy has had an overall net positive effect on collection of FVS in this jurisdiction.

3.7.1.2 Collection Rates

There has been a marked increase in the amount of federal victim surcharge being imposed and collected since 2013. The gains have been slow, steady and positive. Three years ago there was $350,000 in surcharge ordered with $300,000 collected that year. The following year it was estimated that there was a clear increase due to the 2013 amendment with mandatory impositions of $800,000 in federal victim surcharge and a slight increase in the collection rate with approximately $380,000 being realized. However, the next year significant gains were noted with $500,000 being collected based on $1.2 million ordered federal victim surcharge. A collection rate for the six year period from 2010-2015 has been estimated at 60%.

3.7.2 Standard Enforcement Process

Unpaid surcharges go to an internal collection agency with Service Nova Scotia. The Motor Vehicle Branch is also involved with enforcing surcharges related to motor vehicle infractions, e.g., DUI, breathalyser infractions; income tax refunds are withheld for unpaid federal victim surcharges through the CRA Federal Refund Set-off Program. It was also noted that the offender's credit rating could be adversely affected once it goes to collection. These measures have been in place well before the amendments of 2013.

3.7.2.1 Reasonable Time

A time frame has not been established by Order in Council in this jurisdiction. Again, the time frame in which the offender must pay the surcharge is set by the judge at the time of sentencing.

3.7.3 Impacts Due to Changes in the FVS

Anecdotal evidence was offered concerning sentencing trends that have been noted in this jurisdiction. In an effort to protect the more vulnerable offenders from undue hardship, the Bench has engaged in "creative sentencing practices" in order to "work around" the mandatory imposition of the surcharge. For example, they will order an exceedingly small fine, e.g., $1, with a subsequent surcharge of 30 cents, or state the fine and surcharge imposed must be paid in 100 years. This is particularly the case with impoverished, homeless individuals and domestic violence situations where the victim may still be cohabitating with the perpetrator and would therefore be penalized by an imposition of a heavy surcharge

on her partner. That being stated, all informants agreed this was a minority of cases and maybe should be considered a solution rather than a problem.

3.7.3.1 Administration

There have been no notable impacts on the administration of the federal victim surcharge regime as the process is fully automated.

3.7.3.2 Victim Services Revenues

As noted earlier in this report, there have been slow, steady, significant gains in the revenue for victim services in Nova Scotia that informants felt have been a direct result from the 2013 amendments of the federal victim surcharge regime, with increases from approximately $300,000 to over $500,000 over a three year period.

Table 3.7.1: Federal Victim Surcharges Imposed and Collected for Nova Scotia by Fiscal Year, 2010-2015

Year Ending	FVS Imposed	FVS Collected
2010	$367,096.15	$311,569.76
2011	$338,292.88	$309,278.38
2012	$313,330.06	$306,061.39
2013	$317,092.90	$295,868.41
2014	$903,612.70	$374,899.17
2015	$1,287,427.71	$526,402.01

3.7.3.3 Offenders' Sentence Completion

When speaking to representatives from Corrections, it was explained that the federal victim surcharge impacts the offender only to the extent that it is part of their case management strategy. For instance, the offender would be encouraged to pay the federal victim surcharge in order to get their motor vehicle license back, in order to get employment which would then further their case management plan.

3.7.4 Local Recommendations

When discussing the collection process for the federal victim surcharge in Nova Scotia the following assertion was put forth:

> "Service Nova Scotia Collections does seem like a very good option to consider in [the] future. I am concluding that the Federal Government would have to make this arrangement with Service Nova Scotia. I know that Service Nova Scotia Collection expenses are covered by charging a 15% collection fee on fines but not on the federal victim surcharge portion. I would strongly recommend that this option of having SNS Collections collect federal fines be explored, but I do not know who in the federal government would have the authority to make this happen."

It should be noted that in Nova Scotia, *Criminal Code* offences with outstanding fines and/or federal victim surcharge are being sent to Service Nova Scotia (SNS) for collection, but other federal fines that fall under Transport Canada, Department of Fisheries and Oceans, or air travel, etc. are not sent for collection.

3.8 The Prince Edward Island Experience

There were two participants from the Prince Edward Island justice system.

- Provincial Manager, Victim Services, Department of Justice and Public Safety
- Manager, Court Services, Department of Justice and Public Safety

3.8.1 Standard Collection Process

There is a Fines Collection Officer in Court Services responsible for the collection of all fines and relevant surcharges including the federal victim surcharge. There are no external collection agencies used in Prince Edward Island. According to the *Summary Proceeding Act* in Prince Edward Island all outstanding federal victim surcharges are forwarded to Access PEI where the Motor Vehicle Branch will use further enforcement strategies to collect the federal victim surcharge.

3.8.1.1 Fine Option Program

There is a Fine Option Program on Prince Edward Island; however it is not available for federal victim surcharge satisfaction.

3.8.1.2 Collection Rates

There was insufficient data available to speak to collection rates of the federal victim surcharge.

3.8.2 Standard Enforcement Process

Outstanding federal victim surcharges are forwarded to the Motor Vehicle Branch at Access Prince Edward Island where vehicle and driver license renewal are withheld until full satisfaction of the federal victim surcharge. These strategies have been in place well before the amendments to the *Criminal Code* took force in October 2013.

3.8.2.1 Reasonable Time

A reasonable time frame to satisfy the federal victim surcharge has not been established by the Lieutenant Governor in Council in this jurisdiction. At the time of sentencing, the judge establishes the time frame the federal victim surcharge must be paid to Court Services. Extensions may be granted by the Fines Collection Officer responsible for collecting the FVS. The informant was not able to comment on the percentage on surcharge being collected in a timely manner within the PEI jurisdiction.

3.8.3 Impacts Due to Changes in the FVS

Problems with enforcing the collection of the federal victim surcharge are "typical to any fine collection" with offenders' inability to pay, problems locating the offenders or in some cases the offenders' licenses already having been suspended thereby rendering this enforcement ineffective.

3.8.3.1 Administration

There has been no significant impact on the administrative aspects of the federal victim surcharge due to its mandatory nature; however, it was noted that "judges struggle with ordering the federal victim surcharge at times because of the offender's circumstances."

3.8.3.2 Victim Services Revenues

The revenues of victim services have not shown a consistent trend since the amendments in October 2013. In fact, when one looks further back to earlier collection rates there was more revenue for victim services in 2010-2011 when $74,378 was collected, than in 2014-2015 with $64,757 collected (of the $258,054 that was imposed). Informants stated, "It is difficult to assess the impact [the amendments have had on revenues for victim services]."

Table 3.8.1: Federal Victim Surcharges Imposed and Collected for Prince Edward Island by Fiscal Year, 2010-2015

Year	FVS Imposed	FVS Collected
2010-11	N/A	$74,378
2011-12	N/A	$79,362
2012-13	N/A	$69,119
2013-14	N/A	$57,460
2014-15	$258,054	$64,757

3.8.3.3 Offenders' Sentence Completion

In Prince Edward Island, it was noted that the "non-payment of the federal victim surcharge can affect the offender's ability to complete the sentence, as well as obtain a record suspension."

3.8.4 Local Recommendations

There were no recommendations from this jurisdiction.

3.9 The Yukon Experience

There were a total of three participants from the Yukon Department of Justice, all from Court Services.

The primary key informants (n=3) were:

- Manager, Court Operations, Court Services, Yukon Department of Justice
- A/ Supervisor, Court Clerks, Court Services, Yukon Department of Justice
- Cashier, Court Services, Yukon Department of Justice

3.9.1 Standard Collection Process

Yukon Court Services does not have a unique collection process in their jurisdiction that court staff community corrections follow in order to enforce the federal victim surcharge where the offender is unable to pay. As a result, there are no policies, manuals or guidelines as there is no unique process to document.

3.9.1.1 Fine Option Program

There is a Fine Option Program in the Yukon and it is available to offenders to satisfy the FVS. It became available after the amendments took force in October 2013.

When a court clerk reviews the fine order with the offender, they advise her/him that the Fine Option Program is available through Offender Supervision and Services (OSS), i.e., probation officers. Court Services does not keep track of how many offenders ask OSS about the Fine Option Program. When OSS registers or deregisters someone in the program, Court Services is informed. Hours worked in the program are applied against the FVS first and then the fine. There are not any statistics available to document how many people pay off their surcharges/fines in this way; it just shows up in the system as the surcharge fine having been paid.

3.9.2 Standard Enforcement Process

The Yukon Territory, as well as the other two territories, does not have any enforcement program. Collection agencies are not used, the surcharge simply "stays on the books". The informants stated that due to the wording of the *Criminal Code* offenders cannot be refused a renewal /issuance of driver's licenses or other territorially-issued permits to promote the payment of federal fines/surcharges.

3.9.2.1 Reasonable Time

A time frame ***has not been established*** by the Lieutenant Governor in Council of this jurisdiction. In the Yukon, the judge always assigns a due date/payment schedule as part of the order. This date is communicated directly to the offender by the judge in court and by clerks when reading the sentence to the offenders. It was noted from data provided from this jurisdiction that 44-50% of the FVS imposed has not been collected since 2012-13.

The following written statement was provided to ensure clarity on this particular issue:

> "In accordance with sections 734.4 and 734.5 of the *Criminal Code,* Yukon cannot refuse to issue or renew, or suspend, the offender's driver's licence until the fine and surcharge are paid in full because the Public Prosecution Service of Canada prosecutes *Criminal Code* and other Federal offences in the three territories. ***Yukon does apply these sanctions to territorial offences and the resulting payment rate is much greater.***"

3.9.3 Impacts Due to Changes in the FVS

The informants could not recall any particular impact that the changes in the federal victim surcharge regime have had on their jurisdiction.

3.9.3.1 Administration

The informants felt there has been no notable adverse effect on court resources.

3.9.3.2 Victim Services Revenues

The federal victim surcharge collected in this jurisdiction has fluctuated over the past five years with collection rates hovering in the $20,000 range from 2010 to 2012, a drop in revenue for the next two years and a substantial increase in collection, $63,665.50 during 2014-15 year. There was also a significant increase in federal victim surcharge imposed during this last year, 2014-15. The overall collection rate for the five year period from 2010-2015 has been estimated at 61%.

Table 3.9.2: Federal Victim Surcharges Imposed and Collected for Yukon by Fiscal Year, 2010-2015

Year	FVS Imposed	FVS Collected
2010-11	$33,240.50	$24,050.50
2011-12	$31,455.00	$22,692.50
2012-13	$22,132.50	$14,795.00
2013-14	$30,146.70	$14,842.00
2014-15	$113,732.75	$63,665.50

3.9.3.3 Offenders' Sentence Completion

Where offenders cannot pay, the fine/surcharge remains outstanding on the books.

3.9.4 Local Recommendations

When asked what concerns have arisen with the collection and enforcement of the federal victim surcharge in the Yukon jurisdiction, it was stated that they are not able to use one of the most effective tools for enforcement, e.g., driver's license sanctions, because of the wording of the *Criminal Code* and this has been a frustrating situation.

3.10 Parole Board of Canada

- Director, Clemency and Record Suspension, Parole Board of Canada
- Manager, Policy and Legislative Initiatives Section, Policy and Operations, Parole Board Canada

The informants from the Parole Board of Canada were offered the interview protocol in its entirety. Due to the peripheral role the FVS plays in the parole and pardon process, the questions from the interview protocol were not deemed directly relevant. These particular informants were asked:

- Is the federal victim surcharge considered during the parole process?
- If the federal victim surcharge has not been paid, what are the repercussions for the offender?
- Is the federal victim surcharge related to pardons/record suspension?
- Can you get a pardon if you have an outstanding surcharge on your order?
- From your perspective, is there anything else that would be helpful to know about the process?

3.10.1 FVS Consideration

3.10.1.1 Parole Process and the FVS

Before being interviewed, the key informant with expertise in parole issues solicited the opinions of several personnel that are intimately involved in the parole process on a daily basis to ensure the accuracy of her answers. All secondary informants were in agreement with what was conveyed in the interview.

The federal victim surcharge is not explicitly considered during the parole process. It is not included in any risk assessment paradigms. It is not noted in decision making or policy frameworks related to conditional release. The payment or non-payment of the FVS has no weight in the risk assessment process or release decisions made by the board.

It was also noted that payment is never considered as a proxy measure for care, concern or remorse toward the victim by offenders that come before the board. It is viewed in the vast majority of cases as a simple indication the offender had the means to pay the surcharge; conversely, it was also noted that an individual experiencing genuine remorse may simply not have the capacity to pay and again, non-payment does not signal any inward disposition towards the victim.

That being stated; the informant posited that in rare situations a parole member might pick up on the fact that an offender made an extraordinary effort to pay the surcharge, e.g., incarcerated with limited

resources making a heroic effort to pay a large surcharge in a timely manner, as noted by those who prepared the report.

In essence, the surcharge is rarely considered in the parole process and would only be on a case by case basis in a very peripheral manner. For instance, the surcharge could be inadvertently considered when information that is provided to the parole board in terms of how the offender is progressing, including their willingness to comply with court ordered obligations, one of which would be the payment of the federal victim surcharge, is written in the report.

Although the federal victim surcharge is not explicitly considered during the parole process, the parole board does consider the victim during the hearing and planning process. For instance, they consider victim impact statements and pay particular attention to ensure they do not contradict any court order when planning release, e.g., no contact situations, but not to the payment of the surcharge.

3.10.1.2 Pardon Process and the FVS

The law is very clear that ***the federal victim surcharge is explicitly considered and must be resolved prior to consideration of eligibility for a record suspension***. Like the payment of a fine, satisfaction of the federal victim surcharge is a legislative requirement under the pardon application scheme.

The informant provided the following documentation to highlight the fact:

Pursuant to section 4.1 of the *Criminal Records Act*

> 4 (1) A person is ineligible to apply for a record suspension until the following period has elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:
>
> (a) 10 years, in the case of an offence that is prosecuted by indictment or is a service offence for which the offender was punished by a fine of more than five thousand dollars, detention for more than six months, dismissal from Her Majesty's service, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of the *National Defence Act*; or
>
> (b) five years, in the case of an offence that is punishable on summary conviction or is a service offence other than a service offence referred to in paragraph (a).

4. SUMMARY

The objective of this research was to develop a better understanding of the current status of collection and enforcement of the federal victim surcharge in cases where the offender is not compliant in making their payment, as well as identify challenges that are present in the current process.

There is marked variability across jurisdictions on the processes used for the collection and enforcement of unpaid federal victim surcharge. Almost half of the jurisdictions questioned use internal collection agencies (n=5), denial of motor vehicle license renewals (n=4), and CRA's Federal Refund Set-off Program (n=4); fewer jurisdictions use external third party collection agencies (n=2) and default hearings with subsequent time served (n=2) as enforcement mechanisms. Only one province uses all four mechanisms involving collection agencies, denial of licence renewals, default hearings and the CRA Federal Refund Set-off Program. Three jurisdictions use only one strategy. Finally, there is one jurisdiction that does not use any special strategies for collecting unpaid federal victim surcharge; the unpaid surcharge simply "sits on the books". Unfortunately, due to time constraints and dated justice information systems, there were not any data available that would illuminate how these enforcement techniques are related to local collection rates of the FVS.

Further, it was found that the Fine Option Program is available for federal victim surcharge satisfaction in four jurisdictions; however, how often this program is being used for that purpose was not available from any key informant. It was also noted that a time frame to satisfy the federal victim surcharge has been established by the Lieutenant Governor in Council in only three jurisdictions; however, every other jurisdiction establishes clear time frames for payment of the FVS at the time of individual sentencing.

Interviewees from the majority of jurisdictions (n=6) felt there has been minimal impact in terms of court services administration. It was also noted that there had been a consistent increase in funds available for Victim Services (n=8), while there were few comments on impact on the offenders' ability to complete their sentences. There was a variety of concerns raised during the interviews, the most notable involving outdated justice information systems (n=3) and creative sentencing practices being employed by the bench (n=8) to work around the mandatory imposition of the surcharge.

What was particularly striking about the interview process in this project was how many personnel and departments ministries had to be consulted to provide comprehensive answers to the ten questions posed in the interview protocol. There was not a single jurisdiction where one individual, through no fault of

their own, was aware of the complete process in cases where the federal victim surcharge is not paid in a timely manner. That being said, this is not a case where the federal victim surcharge is slipping through the proverbial cracks of the collection/enforcement process. Each jurisdiction does have a clear plan for recovery of these funds; however, the knowledge of this process is very compartmentalized, with each department only aware of their piece of the collection/enforcement puzzle.

As the Department of Justice Canada moves forward in its efforts to understand how the federal victim surcharge regime has been evolving across the country since the 2013 amendments, most notable is the high degree of variation among jurisdictions to approaching the collection and enforcement issues around the federal victim surcharge.

5. REFERENCES

Law, M. and Sullivan, S.M. 2006. *The Federal Victim Surcharge in New Brunswick: An Operational Review*. Ottawa: Department of Justice Canada.

Appendix A

Letter of Information
The Federal Victim Surcharge Post former Bill C-37
January 2016

Former Bill C-37, which doubled the amount of the federal victim surcharge and removed judicial discretion of a waiver, came into effect on October 24, 2013. The Research and Statistics Division, Department of Justice Canada, is interested in better understanding how the enforcement of the mandatory federal victim surcharge and resulting collection of monies owed works in the different jurisdictions. The results will be used to identify the impacts of the 2013 amendments to the federal victim surcharge.

As part of this project, Dr. Moira Law has been contracted to undertake interviews with key informants in the criminal justice system, specifically in courts administration and/or in community corrections. We would like to invite you to share your knowledge and experience on enforcement and collection in a telephone interview. You will not be asked for your opinions or perspectives on any of the issues addressed. The interviews will take approximately 30 minutes to complete. The questions are attached for your information.

Individuals will not be named in the report, although jurisdictions will be identified by their specific practices, for example whether or not there is a Fine Option Program. Dr. Law will keep interview notes in a secure location on her work premises and these notes will be destroyed once the final report has been accepted by the Department of Justice.

There are no anticipated risks associated with participation in this interview.

If you agree to participate, but later change your mind, you may withdraw at any time or you may choose not to answer any question. Your participation in this project is greatly appreciated.

The research report will be released to the public. A summary of the key outcomes associated with this research will be shared directly with participants.

If you have any questions about the research, please contact Dr. Moira Law at (506) 849-2746 or by email at lawdom10@rogers.com. If you have any concerns regarding this research project and wish to speak to someone other than the researchers please contact Dr. Susan McDonald, at the Department of Justice Canada, by phone at 613-957-9315 or by email at smcdonal@justice.gc.ca.

Interview Guide
The Federal Victim Surcharge Post Former Bill C-37
January 2016

1. a) What is the standard process in your jurisdiction followed by court staff/community corrections in order to collect the federal victim surcharge where the offender is unable to pay?

   b) Is this process documented in a policy, manual or guidelines? Y/N

2. Does your jurisdiction offer a Fine Option Program? Y/N

3. a) Is the Fine Option Program available to the federal victim surcharge? Y/N
   b) When did it become available?

4. Based on your records, since November 2013, how many offenders cannot pay their federal victim surcharge and are being referred to the Fine Option Program? What proportion of total offenders does this group represent?

5. Since November 2013, where offenders cannot pay their federal victim surcharge and there is no Fine Option Program, or it is not available in these cases, how is your jurisdiction enforcing these orders?

6. Based on your records, since November 2013 how many offenders' cases, where their federal victim surcharge has not been paid, are referred to collection agencies? What proportion of total offenders does this group represent?

7. a) Since November 2013, what other measures are used to enforce payment of the federal victim surcharge in your jurisdiction? For example, income tax refund hold back, denial of renewal of driver's license, denial of renewal of other permits/licenses, etc.

   b) Were any of these measures added after former Bill C-37 came into force? If so, which ones?

8. Subsection 737(4) of the *Criminal Code* notes that the jurisdiction is to establish the time in which a surcharge must be paid and, "If no time has been so established, the surcharge is payable within a reasonable time after its imposition." [1]

   d) Has a time frame been established by the Lieutenant Governor in Council of your jurisdiction? Y/N If so, what is the time frame?

   e) How was this time frame communicated? (e.g. memo to staff, issuance of guidelines, etc)

   f) From your records, what percentage of the federal victim surcharge is being collected within a "reasonable time" as defined by your jurisdiction?

9. Based on your experience, what problems have you had with the enforcement of/collection of the federal victim surcharge?

[1] This subsection was amended in former *Bill C-32*. It came into force on July 23, 2015.

10. Based on your experience in your jurisdiction, what has been the impact of the mandatory surcharge (e.g. since former Bill C-37 came into force) on:

    c) Resources in courts administration and community corrections in your jurisdiction,

    d) Revenues to fund victim services, and

    e) Ability of offenders to complete their sentences?

Appendix B

Federal Victim Surcharges Imposed and Collected per Province and Territory by Fiscal Year, 2010-2015

PROVINCE/ TERRITORY	YEAR	FEDERAL	
		SURCHARGE IMPOSED	SURCHARGE COLLECTED
Alberta	2010-2011	n/a	$1,439,000
	2011-2012	n/a	$2,723,000
	2012-2013	n/a	$1,721,000
	2013-2014	n/a	$1,995,000
	2014-2015	n/a	$2,188,000
Saskatchewan	2010-2011	$687,041	$516,754
	2011-2012	$699,484	$541,794
	2012-2013	$ 731,995	$687,412
	2013-2014	$1,237,052	$1,124,861
	2014-2015	$3,873,651	$2,838,517
Manitoba	2010-2011	n/a	$250,498
	2011-2012	n/a	$231,303
	2012-2013	n/a	$265,152
	2013-2014	n/a	$253,940
	2014-2015	n/a	$425,281

PROVINCE/ TERRITORY	YEAR	FEDERAL	
		SURCHARGE IMPOSED	SURCHARGE COLLECTED
New Brunswick	2010-2011	$353,462	$310,635
	2011-2012	$334,960	$295,719
	2012-2013	$295,082	$257,219
	2013-2014	$514,511	$353,052
	2014-2015	$1,253,911	$536,014
Newfoundland & Labrador	2010-2011	$179,217	$188,245
	2011-2012	$200,230	$232,806
	2012-2013	$164,383	$186,535
	2013-2014	$260,128	$174,649
	2014-2015	$830,029	$290,530
Nova Scotia	2010	$367,096.15	$311,569.76
	2011	$338,292.88	$309,278.38
	2012	$313,330.06	$306,061.39
	2013	$317,092.90	$295,868.41
	2014	$903,612.70	$374,899.17
	2015	$1,287,427.71	$526,402,02

Note for NS: Calendar year

PROVINCE/ TERRITORY	YEAR	FEDERAL	
		SURCHARGE IMPOSED	SURCHARGE COLLECTED
Prince Edward Island	2010-2011	n/a	$74,378
	2011-2012	n/a	$79,362
	2012-2013	n/a	$69,119
	2013-2014	n/a	$57,460
	2014-2015	$258,054	$64,757
Ontario	2009-2010	$1,583,851	$988,638
	2010-2011	$1,781,712	$1,242,612
	2011-2012	$1,579,184	$1,222,701
	2012-2013	$1,907,932	$1,178,499
	2013-2014	$3,373,362	$1,342,272
	2014-2015	$9,827,640	$3,240,072
Yukon	2010-2011	$33,240.50	$24,050.50
	2011-2012	$31,455.00	$22,692.50
	2012-2013	$22,132.50	$14,795.00
	2013-2014	$30,146.70	$14,842.00
	2014-2015	$113,732.75	$63,665.50

Reform of the Purposes and Principles of Sentencing: A Think Piece

Benjamin L. Berger
Associate Dean (Students) & Associate Professor
Osgoode Hall Law School, York University

Research and Statistics Division
Department of Justice Canada
October 2016

The views expressed or implied in this paper are mine and do not necessarily reflect the views of the Department of Justice, Canada.

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Reform of the Purposes and Principles of Sentencing: A Think Piece

Benjamin L. Berger
Associate Dean (Students) & Associate Professor
Osgoode Hall Law School, York University

This short paper reflects on the following question posed to me by the Department of Justice: "In the context of a criminal justice system review, if sections 718 to 718.21 of the Criminal Code (Purpose and Principles of Sentencing) were to be reformed, how would you reform them, what would you include/exclude, and why?" I have been asked to write this piece based on my experience and perspective as a legal academic who writes and teaches in the area of criminal justice, including criminal law, sentencing, criminal procedure, and constitutional issues. I understand that the Department of Justice is not, at this point, asking for a detailed academic research paper, though I will provide references where appropriate and would be pleased to follow up with further information and citations should that prove helpful.

I begin with a few preliminary matters relating to the scope and reach of this reflection piece **(A)**. In part **(B)** I discuss three larger social and legal issues facing sentencing in Canada that serve as orienting points or touchstones for the reforms that I suggest. I argue that any appealing reforms to the purposes and principles of sentencing would have to be directed at reducing the use of incarceration in Canada, remedying the over-incarceration of Indigenous peoples, and addressing the treatment of the mentally ill in the criminal justice system.

Anchored by those orienting justice issues I turn in part **(C)** to the heart of the piece: a discussion of specific suggested reforms and amendments. I argue that reforms to the purposes and objectives of sentencing should jettison the listing of multiple objectives in favour of a single overarching objective: "to contribute, along with crime prevention initiatives, to the maintenance of a just, peaceful and safe society by imposing just sanctions." In terms of an underlying vision of what will best nourish this objective, I suggest that a priority on restoration, rehabilitation, and reintegration is most conducive to addressing the foundational justice issues discussed in part **(B)** and advancing the safety and justice of our society. By contrast, I discuss the problematic status of deterrence and denunciation as sentencing objectives and suggest that reform to the sentencing provisions should seek to de-emphasize these objectives in our practices of sentencing.

A central theme in this paper is that the focus of a reformed scheme should be the *principles of sentencing* that are best suited to giving effect to an underlying policy vision of what sentencing is intended to achieve and what is most likely to meaningfully contribute to a truly just, peaceful, and safe society. To that end, and guided by the goals and issues discussed in **(B)**, I argue that the principles of restraint and individualization should join proportionality in a revised statement of the fundamental principles of sentencing. I offer

comments on the other sentencing considerations listed in the *Criminal Code* and suggest certain new considerations that should be taken into account in sentencing, considerations that flow from the fundamental principles of individualization and restraint, as well as a commitment to the role of substantive equality in crafting sentences that contribute to a just society. Finally, I suggest two "special regard" provisions: one that emphasizes the special regard that a sentencing judge must give to the status of Indigenous peoples in our criminal justice system, and one that draws a sentencing judge's attention to issues of mental illness.

A. Scope of this Paper

The question that has been posed to me implicates a range of issues affecting our criminal justice system and aspects of the *Criminal Code* well beyond the sections that I have been asked to consider. In particular, I note that there are a set of *Criminal Code* provisions and judicial practices that have practical and highly consequential effects on sentencing in Canada. I have in mind, for example, the conduct of sentencing hearings, mandatory minima, and appellate review of sentences (including sentencing guidelines and starting points). Each of these topics has generated significant jurisprudence and academic debate and they, too, require examination and possible reform. That is especially so if Parliament wishes to adopt a new approach to the purpose and principles of sentencing — the success of such a reform will depend heavily on the judicial practices and other *Code* provisions that shape sentencing in Canada. I have views on these matters but given that they fall outside of the question posed to me, I will only be discussing them tangentially and by necessary implication. Given space constraints, please also note that I will not be considering s. 718.21, the provision governing the sentencing of organizations.

Finally, some of what I will discuss below presumes that part of the review of the criminal sentencing regime in Canada will consider the Federal Government's financial investment in restorative and rehabilitative programs. As you will see, an orienting assumption of this paper is that Canadians will be safer, and our sentencing practices will be more rational and just, if rehabilitation, restoration, and reintegration are foregrounded as guiding ideals. No reforms that pursue that vision can be effective without meaningful investment in programs — within and outside of prisons — focused on rehabilitation and reintegration. Reforms to the sentencing purposes and principles of the *Code* will rightly be critiqued if unaccompanied by this kind of institutional and financial investment.

B. Fundamental Issues to be Addressed in any Reform

Any reform to the *Criminal Code* must be animated by an evil that we seek to remedy or a good that we aspire to achieve. The suggestions, reflections, and reforms that I offer in this piece are shaped by a concern with addressing a set of pressing policy issues that are fundamental to the justness and integrity of our criminal justice system, and by extension, to the safety and fairness of Canadian society as a whole. I suggest that there are three such fundamental issues to which a substantively appealing reform to our sentencing principles

and practices must address. If one accepts the centrality and exigency of these criminal justice issues as premises, one is, in my view, impelled to the kinds of reforms and approaches that I explore below.

The first orienting point is the objective of reducing the use of incarceration in Canada. Bill C-41[1] was, in part, motivated by this concern, as reflected in the principles of parsimony and restraint found (albeit somewhat structurally buried, as I will discuss below) in ss. 718.2(d) and (e). However, as the Correctional Investigator for Canada reported in 2013, despite sharply declining crime rates, the number of federally incarcerated inmates in Canada had increased by 16.5%.[2] The objective of reducing reliance on incarceration – of reducing over-incarceration – is as philosophically and practically compelling, and even more pressing, as it was in the 1990s. Practically, heavy use of incarceration does not contribute, in lasting ways, to the safety of our communities, as the experience in the United States seems emphatically to teach. Prisons are poor environments for effecting the kinds of change and rehabilitation that conduce to the long- term safety of society when the offender re-enters the community, and incarceration does little to repair or restore the communities that have suffered the effects of crime. Philosophically, commitment to parsimony in the use of state force and restraint in the deprivation of individual liberty are principles that ought to guide a vision of the just response to wrongdoing in a liberal democratic system. And so I take the reduction in the use of incarceration generally — in favour of approaches to sentencing that respond to the individual's circumstances and to the causes of crime — to be a fundamental orienting premise for any reform of these provisions.

Second, and related, any revisions to the purposes and principles of sentencing would have to be centrally inspired by and directed at the foundational justice issue of remedying the over-incarceration of Indigenous peoples. This objective is highlighted in the Minister of Justice and Attorney General's mandate letter, which speaks of "increased use of restorative justice processes and other initiatives to reduce the rate of incarceration amongst Indigenous Canadians" as amongst the outcomes expected from this criminal justice system review. Of course that goal was also reflected in Bill C-41 and the 1996 sentencing provisions. The Supreme Court of Canada emphasized and sought to address this issue in *R v Gladue*,[3] interpreting s.718.2(e) of the *Code*; but by *R v Ipeelee*[4] the Court conceded that, despite the amendments and the jurisprudence the "crisis" of Indigenous over representation in prisons had only deepened. And in 2016, the Correctional Investigator reported that for the first time in Canadian history, and despite being approximately 3% of the population, over 25% of federal inmates are Indigenous people.[5] Today, any change to the sentencing provisions of the *Criminal Code* must embed and integrate principles and purposes suited to the pursuit

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[1] *An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, SC 1995, c 22.

[2] Sean Fine, "Federal prisons more crowded, violent under Tories, ombudsman says", *Globe Mail* (25 November 2013), online: <http://www.theglobeandmail.com/news/politics/federal prisons more-crowded violent-under tories ombudsman says/article15581828/>.

[3] [1999] 1 SCR 688.

[4] 2012 SCC 13.

[5] "Prison watchdog shocked at number of aboriginal inmates", *CBC News*, online: <http://www.cbc.ca/news/aboriginal/aboriginal inmates 1.340364/>.

of this objective into the structural heart of sentencing practices in Canada. That is, the choice and design of the *overall purposes and principles of sentencing* should be fundamentally informed by the problem of Indigenous over-incarceration. The default frame must shift. Simply naming this issue as an ancillary or discrete sentencing consideration has failed over the last 20 years and does not match the magnitude of the injustice that our sentencing practices have created.

A third and final touchstone issue that would need to be addressed in any reform to the sentencing provisions of the *Criminal Code* is the incarceration of the mentally ill. This issue is also highlighted in the Minister's Mandate Letter, wherein she was asked to address the treatment of those with mental illness in the criminal justice system. Published data from the last 10 years paints a harrowing picture, with up to 28% of those in Canadian carceral settings suffering from a significant form of Fetal Alcohol Spectrum Disorder (FASD) (compared with approximately 1% in the general population), a significantly higher incidence of Asperger's syndrome amongst those involved in the criminal justice system as compared to the general population, and up to 35% of the prison population afflicted by a severe form of antisocial personality disorder.[6] Sentencing practices must respond in a more humane, individualized, and effective way to issues of mental illness in the criminal justice system and adopting sentencing purposes and practices that encourage actors in the process to prioritize appropriate responses to mental illness amongst offenders is both practically pressing and an ethical imperative. Avoiding the use of incarceration as a response to complex social problems of poverty, homelessness, and mental health is, it seems to me, an important measure of the justness of our criminal justice system.

Though it is but one element in the ecosystem of criminal justice in Canada (and one that arises well after the harms of crime have already occurred) there is a tendency in media, public and political debates to freight sentencing with more symbolic and political weight — and more various objectives — than it can reasonably bear. The result has been a confused set of sentencing purposes, tensions within the punishment provisions of the *Criminal Code* (e.g. an apparent emphasis on restraint but the proliferation of mandatory minimum sentences), and the development of Canadian sentencing practices and outcomes in troubling directions. My suggestion is that the substantive appeal of any amendments to the purposes and principles of sentencing should be measured by their sensitivity and responsiveness to these three fundamental issues facing our criminal justice system.

C. Reforms

1. Fundamental Purposes and Objectives

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[6] I review some of these studies, and the general treatment of mental disorder in the criminal justice system, in Benjamin L Berger, "Mental Disorder and the Instability of Blame in the Criminal Law" in Francois Tanguay Renaud & James Stribopoulos, eds, *Rethinking Criminal Law Theory: New Perspectives in the Philosophy of Domestic, Transnational, and International Criminal Law* (Oxford; Portland, OR: Hart Publishing, 2012) 117.

One of the notable features of the sentencing reforms brought about in 1996 was the articulation, for the first time, of the purposes and objectives of sentencing. The motivation was to anchor the necessarily discretionary practice of sentencing in a set of common goals, hopefully producing more consistency and reducing disparity. Rather than making decisions about the objectives of sentencing in Canada, however, section 718 of the *Criminal Code* set out a fundamental purpose of sentencing followed by a list from which sentencing judges could select "one or more" objectives in imposing a just sanction. No ranking or priority of these objectives, which would reflect a political judgment about the fundamental orientation and goals of sentencing in Canada, is provided. The result is that the objectives serve as a kind of philosophical buffet for sentencing judges. Whether a judge, based on the argument of counsel, selects (for example) rehabilitation or deterrence as the objective of sentencing in a given case produces a fundamentally different frame and set of assumptions about what a just sanction will involve. A system driven by the objective of denunciation has a fundamentally different shape and very different individual and systemic outcomes than one focused on reparation and restoration. In the end, no decision about the philosophy and political vision that should inform sentencing in Canada was made; that crucial decision was left to individual judges, impeding the coherence, consistency, and systemic focus that a "fundamental purpose" provision should seek to achieve. This buffet approach has allowed debate about the appropriate objectives for a given crime or in a given case to overwhelm discussion of the principles that govern the imposition of a just and appropriate sentence. And if, as often happens, deterrence and denunciation are urged by the Crown and selected by the judge as the guiding objectives in a given case, the principles of restraint and parsimony set out as amongst the principles that should govern sentencing are effectively read out of the analysis. This precise effect was, indeed, one of the features of Canadian sentencing practice that the Court in *Ipeelee* identified as having frustrated the *Gladue* principle. Otherwise put, the current provisions strangely imagine that the principles of sentencing can be coherently articulated independently of a clear decision about the objectives of sentencing. In my view, it is the *principles of sentencing* that do the crucial work in ensuring that the overarching goals of a sentencing regime (including addressing the issues outlined in the previous section) are achieved. The logic should proceed from a clear legislative decision about the purposes of sentencing, through to the principles that will give effect to that objective.

For these reasons, I would amend s. 718 to state simply that "[t]he fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to the maintenance of a just, peaceful and safe society by imposing just sanctions." Whether a given sanction is just is ultimately determined by a set of carefully crafted principles of sentencing informed by an underlying policy vision of the goals that sentencing is intended to achieve and what is most likely to meaningfully contribute to a truly safe, peaceful, and just society. I would lay the legislative focus on the principles and considerations that should guide sentencing, sidestepping problematic debates about the specific objective that ought to prevail in a given case. That is why I favour the statement of a single, clear overarching objective. Of course, an informing policy vision about what systemic orientation will nourish this objective must be settled upon, whether that vision is explicitly stated in the *Code* or not. In light of my

discussion in section (B), I would favour a priority on restoration, rehabilitation, and reintegration as the means best suited to addressing the exigent issues that face our criminal justice system and most conducive to the long-term safety and justice of our society. This would also be faithful to my call for embedding approaches suited to the pursuit of reduced reliance on incarceration, particularly for Indigenous offenders, in the default structure of Canadian sentencing.

In staking out this priority, I must now turn to address the objectives of deterrence and denunciation, which, by virtue of jurisprudential development and legislative intervention, have played a prominent and problematic role in sentencing over the last 20 years.

2. The Status of Deterrence and Denunciation

The practical effect of an emphasis on the objectives of deterrence and denunciation — whether in legislation or in arguments made within a courtroom in a specific case — is to increase the use of incarceration and the length of terms of incarceration. Permitting the adoption of deterrence and denunciation as the primary sentencing objectives in a given case (or a class of cases) is at odds with a commitment to reducing reliance on incarceration.[7] And yet, governed by the current provisions, there is rarely an appellate review of sentence in which, irrespective of the crime charged, the Crown does not advance deterrence and denunciation as the primary objectives driving sentencing. Deterrence and denunciation abstract sentencing from a focus on the individual standing before the court and have the capacity to interfere with crafting an individualized and proportionate sentence. As Chief Justice McLachlin explained on behalf of a majority of the Court in *Nur*, the prioritization of deterrence and denunciation (as well as retribution) is what has driven the proliferation of mandatory minimum sentences "at the expense of what is a fit sentence for the gravity of the offence, the blameworthiness of the offender, and the harm caused by the crime."[8] There is little that one could imagine that would more effectively stake out a new policy path and reorient sentencing practices in Canada from their direction over the past 10 years than to forcefully deemphasize the role and salience of deterrence and denunciation. And there is good cause to do so.

To be sure, denunciation is a necessary and ineradicable feature of criminal punishment. As Justice LeBel explained in *Ipeelee*, the fundamental principle of proportionality intrinsically involves a concern for measured denunciation. He explained that, in addition to serving a "limiting or restraining function," crafting a sentence that is proportionate to the gravity of the offence and the degree of responsibility of the offender also involves "judicial and social

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[7] Of course, an emphasis on deterrence and denunciation does not invariably result in a sentence of incarceration – the effect in a given case might be to aggravate a non custodial sentence. However, as explained in part (B), this paper is shaped by the underlying policy goal of decreasing systemic reliance on incarceration. The weight of juridical experience is that allowing an emphasis on deterrence and denunciation tends, systemically, to increase the use and duration of custodial sentences. That effect is the focus of my discussion here.

[8] *R v Nur*, 2015 SCC 15 at para 44.

censure".[9] A due measure of denunciation is, thus, already involved in crafting a proportionate sentence. Singling out denunciation as a particular objective in a given case or class of crimes can thus only serve to drive sentencing beyond what would be appropriate to a proportionate sentence. This involves the state in a use of the liberty and the body of the individual for purely communicative purposes. Consistent with viewing sentencing as just one component of the ecosystem of criminal justice, it must also be borne in mind that criminalization (choosing what is a criminal offence), prosecution, and conviction are significant means of denouncing conduct. In short, it is difficult to justify denunciation as a priority in settling on the just quantum and form of sentence.

Deterrence sits on even shakier ground. For some years the scholarly literature has shown that deterrence is principally achieved through certainty of apprehension and swiftness of outcome. The dubious status of deterrence and doubt about its role in sentencing were identified in the 1987 report of the Sentencing Commission. And in *Nur*, the Supreme Court has itself recently suggested some caution about the force of deterrence as a sentencing objective. In assessing the government's argument that a mandatory minimum sentence that offended s. 12 of the *Charter* could be justified on the basis of deterrence, denunciation, and retribution, Chief Justice McLachlin cited the Report of the Sentencing Commission and stated that "empirical evidence suggests that mandatory minimum sentences do not, in fact, deter crimes".[10] In the end, in the context of a section 1 analysis, the Court could not conclude that mandatory minimum sentences were rationally connected to the objective of deterrence. Although this reasoning related specifically to one means of aggravating sentence — mandatory minima — Chief Justice McLachlin generally cited longstanding "[d]oubts concerning incarceration as a deterrent"[11] and it is difficult to contain the logic of this ruling to mandatory minimum sentences alone. It is true that a priority on the objectives of deterrence and denunciation have been endorsed by the Court for some offences and certain classes of offenders, as recently as in *R v Lacasee*.[12] But, in the end, permitting the identification of deterrence as a primary objective in sentencing serves to ratchet up sentences, does so on shaky empirical footing, and has the strong potential to run serious interference on an overall policy goal of reducing reliance on incarceration, as the experience of the over-incarceration of Indigenous peoples has emphatically shown.

For all of these reasons, in a reform to the sentencing provisions of the *Criminal Code* I would include a clause that explicitly provides that deterrence and denunciation are *secondary* goals of sentencing and that in no case may they be used to arrive at a more restrictive sentence than would be warranted by application of the fundamental principles of

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[9] *R v Ipeelee*, *supra* note 4 at para 37.

[10] *R v Nur*, *supra* note 8 at para 114.

[11] *Ibid* at para 113.

[12] 2015 SCC 64. Justice Wagner, writing for the majority of the Court, explained that "[w]hile it is true that the objectives of deterrence and denunciation apply in most cases, they are particularly relevant to offences that might be committed by ordinarily law abiding people. It is such people, more than chronic offenders, who will be sensitive to harsh sentences. Impaired driving offences are an obvious example of this type of offence" (para 73).

sentencing set out in the *Code* (as explained in the next section).[13] Given the widespread presence of reasoning about deterrence and denunciation in our existing sentencing jurisprudence, an explicit provision of this sort is necessary if one wishes to chart out a new direction in sentencing in Canada, particularly one that seeks to meaningfully address the fundamental issues set out in part (B) of this paper. The prevailing emphasis on the objectives of deterrence and denunciation must be disrupted if the hope is for different and better outcomes of our sentencing practices. This kind of provision would achieve that disruption or "resetting" of the sentencing jurisprudence.[14] Moreover, and for the same reasons, I would support the removal of sections 718.01-718.03. To make the overall point again, the focus should be on carefully crafted principles of sentencing shaped by (a) an underlying policy vision of the goals that sentencing should achieve and (b) an assessment of what is most likely to meaningfully contribute to a truly safe, peaceful, and just society.

3. The Fundamental Principle(s) of Sentencing

So what are those fundamental principles?
The current provisions identify one such principle, the principle of proportionality. The status of proportionality as a guiding principle for just and appropriate punishment has a long philosophical history and is well established in the contemporary Canadian jurisprudence. In *Ipeelee*, the Court described proportionality as "the *sine qua non* of a just sanction." As framed in our *Code*, proportionality is specifically interested in measuring the sentence against two factors: the gravity of the offence and the degree of responsibility of the offender. Though necessary to the crafting of a just sentence, I would suggest that this single fundamental principle is no longer sufficient as the sole overall principle to guide sentencing. Two further principles should be added.

The first can be drawn from key jurisprudential developments and is both practically and conceptually crucial to addressing the issues outlined in part (B) of this paper: the principle of individualization.[15] In essence, the principle of individualization calls upon a judge to consider the way in which a particular sanction will visit itself on the offender given the *particular circumstances, background, and experiences* of that offender. In a number of cases the Supreme Court has made clear that proportionality must be understood as a fundamentally individualized concept, demanding "an individualized assessment of all of the relevant factors and circumstances, including the status and life experiences, of the

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[13] My critiques of denunciation and deterrence might suggest that they ought to have no place whatsoever in our sentencing practices. As I have explained, a role for measured denunciation is implied by the principle of proportionality, but I have considerable sympathy for this view with respect to deterrence. Nevertheless, given that the jurisprudence and some empirical evidence suggests a certain limited role for deterrence, I have framed this proposed clause in terms of deterrence and denunciation being *secondary* goals of sentencing. The key, in my view, is to ensure that deterrence and denunciation are deemphasized and marginalized as drivers of sentencing. A government might choose to pursue an even more ambitious stance with respect to deterrence.

[14] Although the question posed to me was about legislative amendments to the purpose and principles of the sentencing section of the *Criminal Code*, this is one example of the way in which legislative reform is intimately linked to change in judicial sentencing practices.

[15] I have explored the nature of this principle and some of its implications in Benjamin L Berger, "Sentencing and the Salience of Pain and Hope" 70 Supreme Court Law Rev 2d 337.

person standing before them."[16] Indeed, in *Ipeelee*, Justice LeBel described this principle of individualization as "the fundamental duty of a sentencing judge".[17] This principle is fundamental because it expands a sentencing judge's scope of regard beyond the two considerations intrinsic to the current proportionality principle, namely the gravity of the offence and the degree of responsibility of the offender. Doing so is essential to crafting a just and appropriate sentence because it ensures that the sentence is calibrated not only to these two relatively abstract considerations, but to the concrete and lived effects of a sentence on the life of the individual before the court; otherwise put, individualization ensures that sentencing judges are truly measuring the severity of the suffering imposed by the state through sentencing. Punishment will always be experienced by the individual, and so a just sanction will always have to be individualized. As Chief Justice McLachlin stated in *Nur*, "imposing a proportionate sentence is a highly individualized exercise".[18]

The principle of individualization thus requires the sentencing judge to move beyond gravity of offence and degree of responsibility to consider issues such as the background and circumstances of the offender, as well as the offender's aggregate experience of his or her treatment at the hands of the state. The principle of individualization has a number of practical consequences for sentencing. It explains why a judge may consider state misconduct in arriving at a just sentence in the circumstances.[19] As Justice Wagner explained in *R v Pham*,[20] it also requires a sentencing judge to consider collateral consequences of sentencing (defined broadly by Wagner J as "any consequences for the impact of the sentence on the particular offender"[21]) in settling on the appropriate severity and form of sanction.[22] It is a principle that would also mandate careful consideration of the mental health history and circumstances of an offender, crucial to addressing this issue outlined in part (B). Overall, the principle of individualization also ensures that the laudable principle of parity is not a numerical or formal concept but, rather, sensibly focusses on the parity of experience and consequence for the offender — a more robustly equality-infused sense of parity in treatment that can mitigate the extent to which sentencing serves to aggravate conditions of economic and social marginalization. This point comes through with considerable force in Justice LeBel's use of individualization as a controlling concept in *Ipeelee*:

> Who are courts sentencing if not the offender standing in front of them? If

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[16] *R v Ipeelee*, *supra* note 4 at para 75.

[17] *Ibid.*

[18] *R v Nur*, *supra* note 8 at para 43. See also *Ipeelee*, *supra* note 4, in which Justice LeBel explained that the measurement of a just sanction is, of necessity "a highly individualized process" (para 38).

[19] See *R v Nasogaluak*, 2010 SCC 6, as explained and discussed in Berger, *supra* note 15.

[20] *R v Pham*, 2013 SCC 15.

[21] *Ibid* at para 11.

[22] As Justice Wagner explained at para 11, such collateral consequences (like consequences of sentencing on immigration status) "are not, strictly speaking, aggravating or mitigating factors, since such factors are by definition related only to the gravity of the offence or to the degree of responsibility of the offender (s. *1*18.2 (*a*) of the *Criminal Code*). Their relevance flows from the application of the principles of individualization and parity. The relevance of collateral consequences may also flow from the sentencing objective of assisting in rehabilitating offenders (s. *1*18 (*d*) of the *Criminal Code*)." (emphasis added)

> the offender is Aboriginal, then courts must consider all of the circumstances of that offender, including the unique circumstances described in *Gladue*. There is no sense comparing the sentence that a particular Aboriginal offender would receive to the sentence that some hypothetical non-Aboriginal offender would receive, because there is only one offender standing before the court.[23]

Although Justice LeBel is explaining the force of individualization as a fundamental principle in the sentencing of Indigenous offenders, the case law is clear that the point is a general one. Indeed, this is another way in which the principles essential to the just sentencing of Indigenous persons can and should be installed into the general, default architecture of sentencing in Canada.

The second principle that I would add to the existing "fundamental" proportionality principle is the principle of restraint. The justification for adding this as one of (what would now be) three fundamental principles of sentencing can be briefly stated. Paragraphs 718.2(d) and
(e) currently articulate forms of this restraint principle, requiring judges to use the least restrictive sanction appropriate in the circumstances and clearly stating that imprisonment should be used as a last resort (with "particular attention to the circumstances of Aboriginal offenders"). Though suggesting the centrality of restraint to a just, peaceful, and safe society, these provisions are essentially buried as one of five "other sentencing principles" that "a court that imposes a sentence shall also take into consideration." As I have suggested, the subsidiary status of these "other principles" (subsidiary to the menu of objectives as well) have blunted their force. Restraint is not an ancillary or technical consideration. It is a fundamental element of a vision of the approach to sentencing that is most suitable and just in a free and democratic society. It is also the *"sine qua non"* (to borrow from the Court's characterization of the importance of proportionality) of addressing the foundational justice issues outlined in part (B). It should therefore be pulled out of the list of "other principles" and centralized in our sentencing approach. I am skeptical that reduction of reliance on incarceration, novel and modern approaches to sentencing, and advances on issues of Indigenous over-incarceration are possible without elevating restraint as one of the fundamental principles of sentencing.

Ultimately, then, I suggest that s 718.1 be amended to reflect the "fundamental *principles*" of sentencing. A sentence must be: (a) **proportionate** to the gravity of the offence and the degree of responsibility of the offender; (b) **individualized** so as to take into account the particular circumstances, background, and experiences of the offender; and (c) **restrained** such that it imposes the least restrictive sanction appropriate in the circumstances, with imprisonment used only when no other sanction is appropriate. This triptych of fundamental principles – whereby each is distinctive but all inform each other – gives focused guidance on how to give effect to an underlying vision of what is likely to best

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[23] *R v Ipeelee*, *supra* note 4 at para 86.

contribute to a just, peaceful, and safe society.

4. Other Sentencing Considerations

In focusing this paper, I have chosen not to separately consider each of these principles (or, perhaps more accurately and helpfully labelled, "considerations") currently listed in s 718.2 as "other sentencing principles" that "a court that imposes a sentence shall take into consideration". My emphasis is on an enriched and reoriented set of fundamental principles and, consistent with that emphasis, I would introduce these supplementary and largely technical, though important, considerations — such as totality, parity, etc. — by stating that "In giving effect to the fundamental principles of sentencing, a court that imposes a sentence shall take into account the following considerations". I have already suggested that the principle of restraint is different in kind and more foundational to orienting sentencing practices than the other considerations listed here; I have, as a result, urged that paragraphs 718.2(d) and (e) be integrated into our fundamental principles of sentencing. I have only a couple of brief observations about the remaining considerations listed in the current provision.

First, although 718.2(a) purports to direct judges to consider aggravating and mitigating circumstances, the subparagraphs that follow all list aggravating factors (many of which, of course, can be highly relevant). The effect is to create a menu of statutory aggravation. I would suggest a more balanced list of aggravating and mitigating factors, such as is found in the excellent recent amendment to the defence of person provisions of the *Criminal Code* (see s34(2)). Second, I pause to note that recent amendments to sentencing provisions elsewhere in the *Code* have created significant tensions with some of the considerations listed here. Bill C-54, for example, which provided for parole ineligibility periods for those convicted of multiple murders to be served consecutively (see s 745.51), is in troubling relationship with the totality principle listed in s 718.2(c). This is reflective of a general problem in the sentencing provisions in our *Code* (the proliferation of mandatory minima and the fundamental principle of proportionality, with its crucial individualization dimension, is another potent example) and will require sustained legislative attention and reform that should, in my view, begin with decisions about the guiding principles and then turn to consequential amendments that give effect to those principles.

In a reform to s 718.2, I would however add two new and related specific sentencing considerations that flow naturally and, in my estimation, necessarily from inclusion of *individualization* as a fundamental principle. Indeed, they are already implied by individualization, though I think that their separate articulation is important in helping to give substance to that fundamental principle. First, and supported by the jurisprudence that I have discussed, a sentence should take into account the collateral consequences of the sentence on the particular offender. Such a clause would essentially codify the important principle established in *Pham*. Second, I would include as a consideration that, if a period of incarceration is to be imposed, the sentence must take into account the reasonably foreseeable conditions of incarceration and the availability of rehabilitative programming.

This would be a bold new inclusion, asking judges to inquire into the form of incarceration that is likely to be imposed and the conditions in our carceral institutions before settling on a sentence. Our current sole focus on quantum and duration as the determinants of the severity and appropriateness of a sentence of incarceration is inadequate if we are committed to the idea that sanctions are just when they are calibrated in a proportional — let alone individualized and restrained — manner. To put the point simply, a 3-year sentence served in a maximum security facility with little by way of rehabilitative programs is a fundamentally different and more severe punishment than a 3-year sentence served in a medium security prison with robust programing available. To arrive at a proportional, individualized, and restrained sentence (and to give effect to the proposition that society will be safer and more just if an offender is rehabilitated rather than simply incarcerated) a sentencing judge must know what the conditions and experience of incarceration will be. There is, in my view, support in the jurisprudence for such a clause and it would be a salutary intervention into our sentencing practices.[24]

Finally, mindful that the fundamental purpose of sentencing directs our attention to the role of just sanctions in maintaining a just society, I would provide that a court that imposes a sentence shall take into consideration the extent to which a sanction contributes to the exacerbation or amelioration of social inequality and of the marginalization of historically disadvantaged communities. Although implicit in all that I have suggested in this paper, this sentencing consideration is of sufficient ethical and practical importance to warrant separate and explicit emphasis.

5. Special Regard

The early portion of this piece identified three fundamental justice issues that any reforms to the purposes and principles of sentencing would have to meaningfully address. Anchored and informed by those foundational issues, this paper has thus far sought to provide reflections and reforms that would enhance the justice and effectiveness of our sentencing practices as a whole. I have, for example, proposed principles for the default frame and practices of sentencing that are also suited to reducing Indigenous over-incarceration and to the kind of individualization that would help to address the treatment of the mentally ill in our sentencing system. It nevertheless remains important, in my view, to ensure that reforms to this part of the *Criminal Code* put separate and forceful emphasis on the fundamental issues with which I began this piece.

Accordingly, I would include a separate provision — not one tucked into the other principles of sentencing — that sets out the special regard that a sentencing judge must give to the status of Indigenous persons in our criminal justice system. Such a provision would essentially capture and preserve the principles and practices set out in *Gladue*, as interpreted and clarified in *Ipeelee*, as part of a systemic commitment to responding to

[24] I expand upon and justify this proposal in Berger, *supra* note 15.

the legacy of colonialism and issues of justice for Indigenous peoples.[25] Without reviewing in detail the holdings in those cases, I would favour an independent section providing that: in giving effect to
the purpose and fundamental principles of sentencing, special regard should be had to remedying the over-incarceration of Indigenous offenders, and that in all cases involving Indigenous offenders, irrespective of the seriousness of the nature of the offence, a sentencing judge is under a duty to consider (a) the unique systemic or background factors which may have played a part in bringing the particular Indigenous offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Indigenous heritage or connection.[26]

Similarly, although such regard is necessarily implied by the fundamental principles of proportionality and individualization, given the pressing issue of the incarceration of the mentally ill as discussed in part (B), I would include a separate provision stating that, when giving effect to the purpose and fundamental principles of sentencing, judges must give special regard to the effect of mental illness on the responsibility of the offender and the form of sanction best suited to responding to the circumstances and needs of offenders suffering from mental illness. "Mental illness" should be understood broadly to include not only the kinds of mental disorder that qualifies for the defence of NCRMD, but conditions such as FASD, autism spectrum disorder, and personality disorders. If a term other than "mental illness" better captures that broad range of conditions, that term should be used.

D. Conclusion

Thank you for the opportunity to contribute this short "think piece" as part of your review of the Purposes and Principles of Sentencing section of the *Criminal Code*. Should you require further information or elaboration of anything contained in this paper, please do not hesitate to call upon me.

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[25] As Justice LeBel so aptly put it in *Ipeelee*, *supra* note 4, "[t]he overwhelming message emanating from the various reports and commissions on Aboriginal people's involvement in the criminal justice system is that current levels of criminality are intimately tied to the legacy of colonialism." (para 77)

[26] The inclusion of sections governing the procedure and funding for gathering the information necessary for this kind of assessment ("*Gladue* reports") is an important matter that falls outside the scope of what you have asked me to consider in this paper.